

Demystifying  
Non-Discrimination for effective  
Child Rights Programming  
in South and Central Asia





DISCUSSION PAPER

# **Demystifying Non-Discrimination for effective Child Rights Programming in South and Central Asia**

This Discussion Paper has been developed to generate interest and as background information for the *Regional Workshop on Demystifying Non-Discrimination for effective Child Rights Programming in South and Central Asia*, held from 24-28 October 2005 in Kathmandu, Nepal.

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We deliver immediate and lasting improvements to children's lives worldwide.

Save the Children works for:

- a world which respects and values each child
- a world which listens to children and learns
- a world where all children have hope and opportunity

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Project Manager:	Ravi Karkara
Written by:	Bandana Shrestha with Ravi Karkara and Lena Karlsson
Production Management:	Neha Bhandari, Savita Malla and Prajwol Malekoo
Copy edit:	Kalpita Sarkar and Sandhya Rao
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Save the Children Sweden  
Regional Office for South and Central Asia  
Sanepa Road, Kupundole, Lalitpur  
GPO 5850, Kathmandu, Nepal  
Tel: +977-1-5531928/9  
Fax: +977-1- 5527266  
rosca@sca.savethechildren.se  
www.rb.se

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## Foreword

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

- Article 2, United Nations Convention on the Rights of the Child

Discrimination exists in every society - whether the society is rich, poor, developed or developing. Discrimination needs to be understood in relation to power-dynamics in societies because it is ultimately ‘power relations’ that determine the status of individuals or groups within any social spectrum.

Just like adults, children too face discrimination. However, the type of discrimination and how they experience it differs according to the existing social and cultural system in different societies. Children in virtually all societies have less power than adults and are therefore more vulnerable to discrimination. Many children face multiple forms of discrimination because they happen to be girls, disabled, exposed to trafficking, infected or affected by HIV and AIDS or belong to an ethnic or religious minority or even because of their social status, to name a few. Social exclusion and the lack of access to services and resources are common effects of discrimination.

At present, there is growing interest in the rights based approach and Child Rights Programming (CRP) among various organisations in South and Central Asia. The overall vision is to achieve greater benefits for girls and boys by operating a coherent programme based on Child Rights Programming. In both the Universal Declaration of Human Rights (UDHR) and United Nations Convention on the Rights of the Child (UNCRC), equity and non-discrimination is fundamental for respecting, fulfilling and protecting the rights of children. But in reality the in-built power dynamics or structures in society often constrain or restrain access of discriminated groups in attaining their rights. As a result, discrimination is the biggest constraint in the promotion of a ‘rights based approach’ to development.

Many programmes in the region are diversity-blind and do not actively address root causes of child rights violations such as patriarchal structures and unequal power relations. To ensure that the principle of non-discrimination is addressed holistically, the need for an in-depth exploratory work on non-discrimination is pivotal. This will hopefully contribute towards more effective policy development and strengthening of existing programmes to meet children’s rights and needs.

While participation of boys and girls is integral to all Save the Children Sweden programmes, it was found that little information is available on how children themselves perceive discrimination and what coping mechanisms they have developed. In South and Central Asia, girls' and boys' perceptions on discrimination and their actions to promote inclusion and equity was identified as vital in designing and implementing a child rights based programme. This Paper, therefore, includes the perceptions of some children's groups on this issue to develop a more holistic understanding about discrimination as a social issue and to find out an effective mechanism towards eliminating it.

The Discussion Paper aims to raise the issue of children who are discriminated against in multiple forms and at different levels, which includes gender, physical and mental disability, age, ethnicity, trafficked children, sex workers, child workers, sexual orientation, religion, children of internally displaced persons (IDPs) and child soldiers. It is hoped that the recommendations and actions developed will facilitate prioritising of issues and developing methods and tools to address discrimination by Save the Children and its partners.

**Dr Kamal Uddin Siddiqui**  
Member  
CRC Committee

# Acknowledgement

We are guilty of many errors and many faults,  
But our worst crime is abandoning the children,  
Neglecting the fountain of life.  
Many of the things we need can wait.  
The child cannot wait.  
Right now is the time his bones are being formed,  
His blood is being made,  
And his senses are being developed.  
To him we cannot answer 'Tomorrow'  
His name is 'Today'.

- Gabriela Mistral, Noble Prize winning poet from Chile.

This Discussion Paper would not have been possible without the continual support and advice of Ravi Karkara and Shyamol Chaudhury. I am grateful to them for sharing their immense knowledge and expertise on the subject with me.

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I would like to thank Dr Kamala Uddin Siddiqui for sharing his experiences of being the first ever CRC Committee member at the workshop, for his inspirational advice and constant support in furthering the work at both the UNCRC and national levels.

## **Bandana Shrestha**

Principle Researcher, Non-Discrimination  
Save the Children Sweden  
Regional Office for South and Central Asia

## *Abbreviations and Acronyms*

CAT	Convention Against Torture
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CERD	Convention on the Elimination of all forms of Racial Discrimination
CRP	Child Rights Programming
DPCCS	Department for Probation and Child Care Services
HIV and AIDS	Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome
HRC	Human Rights Committee
IDP	Internally Displaced Person
ICCPR	International Covenant on the Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
INGO	International Non Government Organisation
NCPA	National Child Protection Authority
NGO	Non Government Organisation
NHRC	National Human Rights Commission
NMC	National Monitoring Committee
NPA	National Plan of Action
SAARC	South Asian Association for Regional Cooperation
TB	Tuberculosis
UDHR	Universal Declaration of Human Rights
UNCRC	United Nations Convention on the Rights of the Child
UNFPA	United Nations Fund for Population Activities
UNICEF	United Nations Children's Fund

# Executive Summary

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

- Article 2, UNCRC

## Background

“I too have suffered from discrimination. I am 17-years-old. We are poor. We work for the rich Naidus (an upper caste) in their fields, sowing the saplings, taking out weeds and harvesting. They poured porridge in our hands and we would take that. We also used to work in fields owned by Brahmins (an upper caste). We called the Brahmins during the time of harvest. They would not touch or speak to us. At school, children of other castes would speak ill of us. If we went outside to work, they asked us what caste we were. When we said that we are Pariahs (a lower caste) and asked for water, they asked us to drink water kept in a jar separately and refuse to give it with their own hands.”

- A girl from Tamil Nadu (India)<sup>2</sup>

This Discussion Paper was undertaken in light of the growing interest in Child Rights Programming (CRP) in various organisations. The overall vision of CRP is to achieve greater benefits for girls and boys by designing and implementing a coherent programme. In both the Universal Declaration of Human Rights (UDHR) and United Nations Convention on the Rights of the Child (UNCRC), equity and non-discrimination is one of the fundamental principles for respecting, fulfilling and protecting the rights of children. However, in reality, the in-built power dynamics and structures in society often constrain or restrain access to their rights. As a result, discrimination is one of the biggest constraints in the promotion of a ‘rights based approach’ to development.

The principle of non-discrimination is a common theme that runs through almost all legal documents both at national and international law. Yet, discrimination of some form or the other occurs daily and many children and adults are excluded from society and basic services, undermining the concept of equality. Discrimination is a significant factor in rights violations. Discrimination is a result of differential power relations, between and within groups, where one group or individual exerts control over another through economical, cultural, social or political monopoly and control. The most common effects of discrimination are stigmatisation, social exclusion, low self-esteem, alienation and lack of access to services and resources.

Children too face serious forms of discrimination. However, the type and ways of discrimination children experience differs according to the existing social and cultural system in societies. Children in virtually all societies

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<sup>1</sup> The United Nations Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by the UN General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990, in accordance with Article 49.

<sup>2</sup> Save the Children, 2004, Seven Windows of India, Documentary (taken from transcript)

have less power than adults and are more vulnerable to discrimination. Many face multiple layers of discrimination, for example, a young indigenous girl who has a disability is more likely to be vulnerable to exploitation, as compared to a boy from a rich family. When girls and boys are socialised in a society where discrimination is present or accepted, they also 'learn' to discriminate against other children and adults.

However, there is very little information on children's perspectives or voices on how they see or cope with discrimination and address discrimination. The little information we are able to garner suggests that children are very aware of discriminatory practices and many face harassment, stigmatisation, low self esteem and exclusion, all of which have negative consequences for the child's holistic development. In some circumstances, due to discrimination, harassment, fear and exclusion, some children even commit suicide or are murdered with impunity. Children who are discriminated against are often more at risk of being abused and exploited.

This Paper attempts to include voices of children from South and Central Asia on the issue to develop a more holistic understanding of discrimination as a social issue and recommend realistic intervention strategies towards eliminating it.

**The Discussion Paper has been developed through secondary research of books, reports, UNCRC Concluding Comments, national constitutions, international human rights treaties and internet resources. It has been developed with adults and children. From the inception of the Paper, the author has attempted to be inclusive of various groups that face discrimination in multiple ways and their concerns and issues.**

Discrimination is a product of prejudice, competition for scarce resources, superstition, fear of change, unequal power structure (economical or political), patriarchal power structures and religion (which is often a misrepresentation of religious texts used to suppress and control girls and women). Unless the root causes of discrimination are addressed and interventions contribute towards positive socialisation processes, discrimination will continue to be pervasive. This ultimately has long-term impact on children's development, which in turn affects society's growth.

### Addressing discrimination

In order to eliminate discrimination, there has been much work on promoting the principle of non-discrimination both at the international level as well as at national levels. At the international level, the principle of non-discrimination is one of the core values in all international human rights principles, but explicitly in the Convention on the Elimination of all Forms of Racial Discrimination (CERD), Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and UNCRC. At national levels, non-discrimination is one of the core provisions in constitutions, legislations and policy or directives. However, at the ground level, discrimination exists rampantly. Among other reasons, this could be attributed to lack of implementation of legal provisions, lack of criminal liability, unawareness or lack of resources to work in eliminating discrimination and in creating positive attitudinal changes.

The Paper confirms the belief that many programmes in the region are 'diversity-blind' and do not actively address root causes of child rights violations such as patriarchal structures and unequal power relations. While participation of boys and girls is integral to all Save the Children Sweden's programmes, there is scant literature available on how children themselves perceive discrimination and coping mechanisms they possess to tackle it and fight discrimination. However, during consultations on various issues, children do raise the issues of discrimination and suggest ways to address it. There are examples, from the region, of children's actions to fight discrimination.

Positive attitudinal changes are possible by breaking the cycle of oppression and exclusion. This could be done by adopting rights based approaches to programming and looking at identifying, planning, implementing, monitoring and evaluation of programmes through a non-discrimination lens.

There are examples of NGOs taking actions to hold governments accountable to fulfil its obligation to undertake legal measures, allocate resources and develop structures and mechanisms to ensure that most vulnerable and discriminated groups of children and their communities are equally included in the promotion of rights. Accountability should be further strengthened through identification of gaps within the legal system, capacity building and advocacy. Further, there are examples of civil society members promoting diversity-friendly and inclusive programmes and organisational development. Tools and mechanisms need to be further developed to ensure gender and diversity policies and plans, which need to be adopted.

The collection of accurate and disaggregated data is fundamental for understanding the intensity and complexity of discrimination of vulnerable groups of children and accordingly adopting appropriate measures. Both institutionalised discrimination and that of vulnerable groups across many levels have numerous similar characteristics. They all exhibit a power struggle of politics, economics and cultural superiority. They are enforced by exclusion, stigmatisation and harassment in society in general and invisible boundaries.

Given the complexity of the issue, there are obviously no readymade fix-it solutions and many of the issues need to be contextualised in counties and communities. However, governments must take measures to ensure that their legal policies and practices do not directly or indirectly contribute to discrimination. In addition, measures taken need to address the root causes of discrimination and equity ensured, where all children are able to enjoy their rights to the fullest extent possible.

Addressing discrimination from a rights based approach means that organisations will have to address various forms of discrimination (for example gender, age, ability, sexual preference, HIV and AIDS status, religion, ethnicity, caste and so on) from a multi-sectoral approach, factoring in both immediate and underlying causes, such as unequal power relations and patriarchal structures. It is vital to call upon organisations to mobilise boys and men to protest violence and to take initiatives for more equal gender roles and relationships. Action needs to be taken to ensure that the right to non-discrimination is protected through the Constitution, laws and

policies, and that these laws and policies are implemented and closely monitored. It is, at the same time, important to work with a bottom-up approach to address values, attitudes and practices that perpetuate and reinforce discrimination and inequalities at the community level.

The principle of non-discrimination is closely related to the principles of participation and accountability. It is often the lack of participation of rights holders and accountability of the key duty-bearers (such as government officials, family and community members) that perpetuates and reinforces discrimination. By empowering and working closely with children who face discrimination, organisations will be able to develop relevant actions and ensure that duty bearers do not only listen to girls and boys, but that they also act on children's agenda.

Working from a rights based approach implies that organisations have to address discrimination simultaneously, both through their programmes and from within their setup. Therefore, it is important to have a diverse workforce, with staff members from various backgrounds at all levels of the organisation. This will promote values of equality and will counteract stereotypes and discriminatory behaviour.

## Overall Recommendations

### *Advocacy and Lobbying*

- Launch awareness raising activities, especially on child rights and non-discrimination, which should include children themselves, parents, teachers, religious leaders, judiciary, law enforcement officers and others working with children.
- Undertake fact-finding research, together with children, both qualitative and quantitative, which should be systematically documented and made widely available to adults and children.
- Widely disseminate information and documents at all levels, especially to the judiciary, law enforcement agencies, religious leaders, the community and parents. Where necessary, all relevant materials should be translated to the local language.
- Network and build alliance with like-minded organisations working with vulnerable groups, including children's own organisation to lobby and advocate for change in legislation on non-discrimination, information sharing and to act as pressure groups.
- Lobby and undertake advocacy work on non-discriminatory legislation, its criminalisation and monitoring mechanism.
- Explore and document various advocacy tools, such as the Concluding Observations of the CRC Committee, to pressurise the government to take actions.

### *Capacity Building*

- Build capacity of children, parents and community on non-discrimination and UNCRC.
- Train and ensure that all relevant stakeholders, including children's organisations, have knowledge and capacity to work with non-discriminatory laws and policies.
- Build capacity to promote inclusion and respect for diversity, and establish clear goals and time-scales for moving towards inclusive education for all children.

## *Education*

- Governments should enact and enforce national legislation prohibiting discrimination in educational settings against children on grounds of race, ethnicity, gender, social or other status. Protection from discrimination should include mechanisms for discriminated children and their guardians to lodge complaints and receive speedy redress; these mechanisms should be publicly communicated.
- Governments should allocate educational resources to ensure that underserved populations, including vulnerable children, have equal access to education.
- Ministries of Education should develop specific plans and mechanisms to identify and reach out to populations of children that are underserved by the education system.
- Education should be holistic, taking into consideration children's views, in line with the needs of discriminated groups. This should include language of teaching, timing and relevancy of curriculum and school environment.
- Increase children's participation in schools by providing and ensuring adequate educational materials; easy access to educational institutions (geographical location); proper infrastructure and facilities (including separate toilets for boys and girls and accessibility to wheelchairs); relevant syllabus and methods of teaching and learning; awareness of education to parents; sensitisation on non-discrimination in schools and respecting cultural and social values (valuing girls, disabled, ethnic, indigenous education); and safety and security in schools (especially in conflict areas).
- Develop child friendly associations and/or spaces; or alternative educational centres, which can provide life-related information and facilitate their creativity and enhance knowledge and capacity.
- Review education policies to combat discrimination and violence in schools and effectively develop attitudes of tolerance and understanding of those who are different.
- Include human rights and peace education in school curricula, and ensure the spirit of the rights of the child influence all aspects of daily life in schools.

## *Legislation Reform*

- Governments should enact and enforce legislation and policies prohibiting discrimination in all settings against children because of their race, ethnicity, gender, social or other status, and ensure that resources are allocated such that all children have equal access to all services. Governments must develop concrete plans and mechanisms to identify and include populations of children that are discriminated against and prevented from accessing social services.
- Protect and promote the rights of children, especially of vulnerable groups (such as indigenous children, HIV and AIDS affected and trafficked children) by developing appropriate legal frameworks such as legislation and policies based on children's human rights.
- Implement campaigns of 'zero tolerance' of discrimination and violence against children, and introduce mechanisms through which children can challenge violence and abuse they are exposed to, due to their vulnerable situation.
- Governments should ensure that communities to which these children belong receive adequate protection under the law, and make certain that these laws are effectively enforced at the national and local levels.

- Legislation should be enacted to criminalise discrimination, and should be widely disseminated and implemented through capacity building of personnel with emphasis on judiciary, law enforcement and other service providers.
- Ensure and promote participation of discriminated groups (both as individuals and as a group) in decisions that affect families, schools and the community. Participation of discriminated groups should also be ensured in local and national government decisions and in all consultation mechanisms in which discriminated children are fully and effectively represented.

### *Media*

- Raise awareness of discriminated groups through various forms of mass media. Utilise current statistical information as well as life stories or qualitative information reflecting children's situation.
- Work with the media and encourage them to avoid stereotypes and prejudicial expressions in their products.
- Leaders and people who are strong role models including children, should be encouraged to stand up publicly against xenophobia, prejudices and discriminations.
- Expose unintended consequences or lack of appropriate legislations and policies on children.
- Support children's media initiatives to fight discrimination.

### *Monitoring*

- Establish a system of self-monitoring that should be inbuilt into the government (at all levels) and complemented by an independent review mechanism, for instance, an ombudsman on the implementation of legislations on non-discrimination, inclusiveness to basic services and equity of all vulnerable groups.
- Encourage monitoring by NGOs.
- Develop monitoring tools for self and partner organisations, including a code of conduct for NGOs.
- Develop impact indicators reflective of discriminated children's groups such as indigenous children, HIV and AIDS affected, trafficked children, and those of vulnerable caste, gender, ethnicity, age, economic background, sexual orientation and so on.
- Conduct monitoring and auditing of expenditure and budget; and policy performance at village level of governments, NGOs, international development agencies and UN agencies.
- Establish Child Rights Commissions and ombudspersons for the implementation of the Convention including the principle of non-discrimination.

### *Research and Information/Documentation*

- Documentation of information both qualitative (including success stories) and quantitative (disaggregated statistics for all discriminated groups by caste, gender, ethnicity, age, economic background and so on) for effective implementation of programmes and advocacy for change.
- Collection of relevant and disaggregated data across different identities and countries, showing trends over time and analysed regularly.
- An information strategy should be developed to foster tolerance and to expose past violations.



# *1* Introduction

**D**iscrimination is a common problem in any society. It works against the concept of equality and contributes to violation of basic human rights of an individual. It leads to differentiation between groups or individuals. Discrimination needs to be understood in relation to power-dynamics in societies, because ultimately it is the power relation that determines the status of individuals or groups in the spectrum of any society.

Discrimination can be the result of direct and deliberate action by powerful groups or it can happen unconsciously. The most common effects of discrimination are social exclusion and the lack of access to services and resources.

In today's world discrimination exists universally, irrespective of whether a society is rich or poor, developed or developing. It involves differential treatment of individuals or groups which is motivated by their status and background. Discrimination occurs when individuals or groups with more power treat those with less power unjustly.

Children too face serious forms of discrimination. However, the types and ways of discrimination of children differ according to the existing social and cultural system of different societies. Children in virtually all societies have less power than adults and are therefore more vulnerable to discrimination. Many children face multiple layers of discrimination because they are girls, have disabilities, are exposed to trafficking, are HIV and AIDS infected, belong to an ethnic or religious minority or simply because of their social status, to name a few.

### ***Rationale of the Discussion Paper***

There is growing interest in rights based approaches and Child Rights Programming (CRP) among various organisations in South and Central Asia. The overall vision is to achieve greater benefits for girls and boys by operating a coherent programme based on child rights programming. In both UDHR and UNCRC, equity and non-discrimination are fundamental principles for respecting, fulfilling and protecting the rights of children. But in reality, the in-built power dynamics or structures in society often constrain or restrain access to their rights. As a result, discrimination is the biggest constraint in the promotion of a 'rights based approach' to development.

**According to the Human Rights Committee** "discrimination should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, disability, sexual preference, HIV and AIDS status, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms".<sup>3</sup>

**Article 2 of the UNCRC states** "State Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status."<sup>4</sup>

<sup>3</sup> Karlsson, L. and Karkara, R., 2004, "Confronting Discrimination in South Asia, in *Save the Children Sweden*" in Theis, J., *Promoting Rights-Based Approaches: Experiences and Ideas from Asia and the Pacific*, Save the Children Sweden, HQ

<sup>4</sup> The United Nations Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by the UN General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990, in accordance with Article 49.

### *Objectives of the Discussion Paper*

The Discussion Paper aims to contribute inputs in achieving the following objectives:

Understand the perceptions of children from diverse backgrounds (such as caste, gender, age, disability, sexual orientation, IDPs, among others) about the ways in which they are discriminated against.

Analyse and promote recommendations and actions suggested by children's groups to promote inclusion and equity.

Prioritise and use appropriate recommendations for developing methods and tools to address discrimination and apply them to Save the Children and their partners' work.

Many programmes in the region are 'diversity-blind' and do not actively address root causes of child rights violations such as patriarchal structures and unequal power relations. To ensure that the principle of non-discrimination is addressed, the need for an in-depth exploratory work is pivotal. This will hopefully open the door for further studies in the region followed by strengthening of existing programmes and formulation of new ones in the area of non-discrimination and gender equality.

While participation of boys and girls is integral to all Save the Children Sweden programmes, it was found that very little information is available on how children themselves perceive discrimination and what coping mechanisms they possess to tackle it. In South and Central Asia, the perceptions of girls and boys about discrimination and their actions to promote inclusion and equity was identified as vital in designing and implementing a child rights based programme. This Paper, therefore, includes perception of children's groups on the issue to develop more holistic understanding of discrimination as a social issue and to arrive at an effective mechanism towards eliminating it.



## *Methodology of Study*

This Discussion Paper has been developed through secondary research. It is hoped that in-depth research using primary research techniques will be conducted, which may initiate national processes for addressing discrimination holistically. National level research will help to garner the 'voices of children' on how they perceive discrimination, how it affects them, who inflicts it, their coping strategies, action taken and recommendations.

## *Limitations of the Study*

The authors and Save the Children Sweden have developed the Discussion Paper from its inception with the aim of raising the issue of discrimination faced by many groups of children at multiple layers and in various forms. These groups are based on gender, disability (physical and mental), age, ethnicity, trafficked children, sex workers, child workers, sexual orientation, religion, children of internally displaced persons (IDPs), and child soldiers among others. Due to limitations of time and lack of materials for directly addressing discrimination per se of children, the study has had to be scaled down.

Due to the lack of availability of information and documents, and varying degrees of visibility of some vulnerable groups, some types of discrimination have been covered in depth and others have been mentioned in passing. Again, limitations of time have had an affect on the quality of information presented.

## LAYOUT OF THE REPORT

**Chapter 1** looks at 'why' the study has been undertaken.

**Chapter 2** defines discrimination, explores its roots and immediate causes and how it is reproduced through the socialisation process. It also discusses the impact of discrimination on the daily life of children and its future implications.

**Chapter 3** discusses the problem and context of discrimination and the difficulty in working in this area due to lack of appropriate legislation, data or statistical evidence; lack of reporting mechanisms and how development organisations have provided limited coverage in this area.

**Chapter 4** presents the right to not be discriminated as a human rights principle. It analyses the various

international human rights instruments, including the UNCRC, CEDAW, CERD, ICCPR, ICESCR, UDHR and the governments' obligations respectively.

**Chapter 5** explores the constitutional provisions of each country in South and Central Asia with regard to the principle of equality of all citizens. It compares the constitutional provisions with the international human rights treaties. It further examines in some depth the action taken by governments, as recommended by the CRC Committee, to develop and implement legislations and policies to remedy inconsistencies or discrimination that is present in the present legal, social and cultural practices.

**Chapter 6** examines how children who are discriminated against are excluded, oppressed and alienated, and its long

term impact on children's development. It attempts to bring out some of the issues in children's own 'voices' and how it affects them.

**Chapter 7** looks at interventions that should be undertaken to break the cycle of oppression and exclusion as an outcome of discrimination. It explores interventions by adopting a rights based approach to programming and suggests some steps that should be taken to combat or eliminate discrimination.

**Chapter 8** offers recommendations for working to eliminate or combat discrimination. Firstly, it provides general recommendations which are or should be applicable to population of children who are discriminated against. Secondly, it offers recommendations applicable to specific thematic groups.



## 2 Defining Discrimination

**D**iscrimination is at the heart of human rights' violations. It includes elements of injustice and is catalyzed by imbalance of economic, social and political disparities.

The word 'discrimination' is derived from the Latin word '*dis-scimere*' which means to 'distinguish between'. Discrimination exists in every society whether rich or poor, developed or developing. Like adults, children too face discrimination in all societies. However, the type of discrimination and how they experience it differs according to the existing social and cultural system of different societies. According to the Human Rights Committee 'discrimination should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, disability, sexual preference, HIV and AIDS status, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms'.<sup>5</sup>

Stigma, a key outcome of discrimination, is a powerful tool of social control. Stigma can be used to marginalise, exclude and exercise power over individuals who show certain characteristics. For example, while the societal rejection of certain social groups (such as homosexuals, drug users, sex workers) may predate HIV and AIDS, the disease has, in many cases, reinforced this stigma. By blaming certain individuals or groups, society can excuse itself from the responsibility of caring for and looking after the concerned population. This is seen not only in the manner in which 'outsider' groups are often blamed for bringing HIV into a country, but also in how such groups are denied access to services and treatment.



Discrimination often involves treating an individual or group of people in ways dictated by their status and background. Discrimination occurs when individuals or groups with more power treat those with less power unjustly, for example governments against citizens, discrimination by adults against children, older children against younger children, one community against another or within groups themselves depending on the power structure within. Discrimination is a common phenomenon in society and is closely linked to power relations that determine the status of individuals or groups in the spectrum of any society. Discrimination can be the result of direct and deliberate action or it can happen unconsciously. Social exclusion and the lack of access to services and resources are common effects of discrimination.

As an integral part of society, children also encounter similar forms of discrimination, sometime even to a greater degree. Poverty, conflict, chronic social instability and preventable

<sup>5</sup> Karlsson, L. and Karkara, R., 2004, "Confronting Discrimination in South Asia, in Save the Children Sweden", in Theis, J., Promoting Rights-Based Approaches: Experiences and Ideas from Asia and the Pacific, Save the Children Sweden, HQ

ROOT CAUSES	IMMEDIATE CAUSES
Lack of awareness	Lack of awareness
Poverty	Lack of socio-legal protection
Distribution of resources (inequality)	Lack of education
Prejudices, beliefs and myths	Lack of political commitment
Social power structures/ power relations (patriarchy)	Insufficient policies (implementation of laws)
Traditional/cultural/social values	
Religious conservatism and misinterpretations of religious laws	
Ignorance Hegemonic forms of masculinities	

diseases such as HIV and AIDS threaten children's rights and sabotage their development. The situation is worse for girls who encounter multiple discriminations daily in homes, schools and within the community.

Similar forms of discrimination are at the base of many other forms of violations when specific groups of children face discrimination on account of their sex, colour, race, religion, political or other opinion, national, ethnic and social origin, property, disability, birth or other status. Disabled children, for example, are often excluded from mainstream education. Children of minority, indigenous or migrant background are disproportionately represented among juveniles who are imprisoned, less likely to access quality and relevant education, are more likely to be recruited as child soldiers, to be trafficked and exposed to hazardous work and sexual exploitation. Creating an environment where girls and boys are respected and cared for equally in early childhood is the first step towards breaking cycles of discrimination and disadvantage.

As mentioned earlier, the principle of non-discrimination, equality and equity, is fundamental to respecting, fulfilling and protecting rights of all human beings and children in particular. But in reality, the in-built power dynamics in society often constrain the attainment of rights by groups discriminated against. As a result discrimination is the biggest constraint in the promotion of 'rights based approach' to development. Many programmes in the region are 'diversity-blind' and do not actively address root causes of child rights violations such as patriarchal structures and unequal power relations.

### ***Immediate and Root Causes of Discrimination***

Despite working with and implementing programmes targeting discriminated groups, discrimination persists. There are two types of discrimination, 'root causes' and 'immediate causes of discrimination'.

The root causes of discrimination are what we have internalised or the environment that the children are exposed to from birth. On the other

hand the immediate causes of discrimination are due to socio-legal factors that continue or perpetuate discrimination, factors that reinforce the root causes.

Children can also be discriminated based on their parent's identities, for example children of parents with HIV and AIDS, parents with disabilities, children of single parents and children of poor parents are often discriminated. Some sources of discrimination against children are also because of physical attributes such as age of children, birth order of children, sex of siblings, geographical location of children and occupation of children.

These root causes of discrimination influence the perpetuation and reproduction of discrimination.

### ***Reproduction of Discrimination***

Different factors can contribute to discrimination:

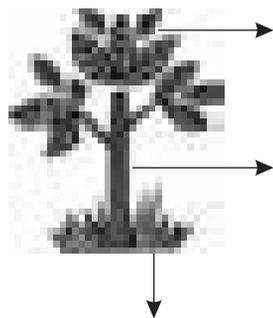
- **Prejudice:** Prejudices or fear of unfamiliar people, such as the fear that an ethnic group will threaten society or jobs of another group or that a specific group may lose its cultural identity.
- **Resources:** where there is limited or no access to resources.
- **Superstition:** discrimination could also be due to superstition, religious or cultural taboos, such as the belief that a child with a disability is the result of a curse.
- **Fear of change:** unwillingness and lack of capacity to change and/or adapt to new circumstances, for example towards immigrants.
- **Unequal power structure:** where one group has more power, either economically or politically and suppresses or exploits the weaker group.
- **Patriarchal power structure:** where boys or men are deemed superior or valued more than girls and women.
- **Religion:** where religious conservatism and/or misrepresentation of religious laws occur to achieve a purpose, for example, suppression or control over women's education and reproduction.

Each individual learns behaviour, attitudes, values, norms, roles and responsibilities through the process of socialisation. The socialisation process, if completed in a culturally negative way, plays an important role as a root cause of discrimination towards a certain sector of the population and more specifically, towards children. Discrimination can affect the way in which children's self esteem and confidence develops. Discrimination against children is closely linked to discrimination against adults since it is passed from one generation to the next. Girls, boys, women and men are constrained by these perceptions and they can prevent people from developing to their full potential and capacity.

There are two distinctive ways by which children can be discriminated. They can be discriminated from birth because of their sex, ethnic or religious background, disability or being HIV and AIDS affected (due to their parents). There are also instances where children are discriminated later on in their lives, for example, when they become disabled due to a traffic accident or self acquired HIV and AIDS.

### *Institutionalisation and perpetuation of discrimination through the socialisation process<sup>6</sup>*

#### **Tree of Socialisation<sup>7</sup>**



**Leaves and Fruit:** Leaves and fruit depict peoples' attitudes in the society and in this case adult behaviour towards children, which is mostly oppressive. This is transmitted into a seed that germinates into a new tree which will continue to oppress and discriminate against children, for example, according to age, gender, ethnicity and disability.

**Trunk:** The trunk holds together social institutions (such as family, religion, education) that transfer social values, norms and belief. Most social institutions see children as learners of adult behaviour, and as a result give little or no importance to girls' and boys' voices.

**Roots:** The roots hold the society's norms, values and beliefs that shape and define the social fabric of people's behaviour towards each other, including the sharing of resources. These norms are generally patriarchal, putting children in a 'power less' position vis-à-vis adults, and as a result excluding and discriminating against girls in particular. Children are not expected to participate in family or community decision-making processes.

Girls and boys learn about their culture while also contributing to its continuity and its transformation. Socialisation ideas and practices are a key part of the culture children learn and perpetuate. Adults use culture to explain or justify child-rearing and socialisation practices which can include practices involving unequal treatment, such as gender discrimination and abuse. This institutionalisation and perpetuation of discrimination process is described in the following diagram.

### ***Discrimination against girls and boys***

When children are less valued or excluded on the basis of gender, race, colour, sex, language, religion, economic background, caste, power relations, religious affiliation, physical characteristics, minority and ethnic discrimination, geographical location and considered as powerless, they are vulnerable to discrimination in society. The experience of discrimination can affect the overall physical, psychological and social development of children. Furthermore, discrimination can hinder children's recognition, enjoyment or exercising of their rights and freedoms.

Clearly, we see from research that gender and economic discrimination forces children to live miserable lives. They are more likely to be trafficked, sexually abused and exploited as child or bonded labour, or forced into illiteracy and early marriage. Children with disabilities, belonging to minorities, ethnic or migrant communities, refugees, HIV and AIDS infected and children living on the streets face more discrimination than other children in society. In many countries

<sup>6</sup> Karlsson, L. and Karkara, R., 2003, Socialisation for Encouraging Children's Participation. Save the Children UK, Bangladesh

<sup>7</sup> Ibid.

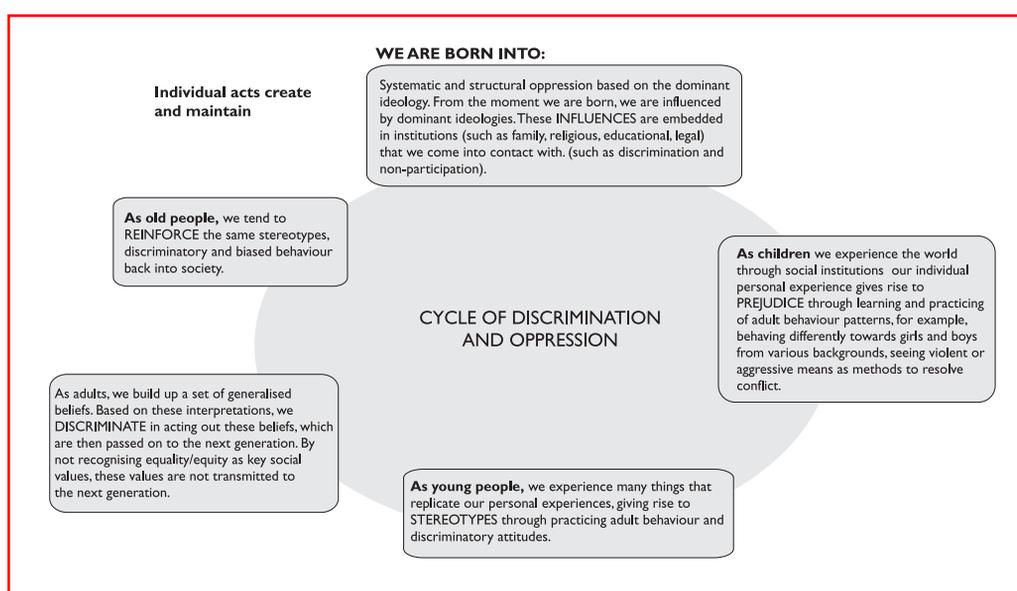
children also face caste and religious discrimination because of norms, values, traditions and prevalent culture of the society.

### **Cycle of Discrimination and Oppression<sup>8</sup>**

Children are born into societies that practice discrimination, oppression, non-participation and exclusion. As a result girls and boys learn and practice prejudicial behaviour during childhood. They call other children degrading 'names', bully and exhibit targeted violent behaviour, or exclude certain groups of children from their games - for example girls, children with disabilities and children from minority groups. As they grow into adulthood they continue to act out stereotypes which are internalised and exhibited in their discriminatory behaviour. A cycle of oppression and exclusion results in transmitting the same practices to the next generation.

Girls and boys learn traditional gender roles and behaviour at an early age. Boys, for example, learn that they should be active, strong, not cry or show feelings. Family and peer groups often play a crucial role in this socialisation process. Traditional gender roles and relations are also reproduced and perpetuated by the media, religious or traditional leaders, the private sector (advertisements and stereotyped toys), and educational systems that incorporate gender stereotypes into the curriculum. In relation to sexuality, girls and boys often receive different messages. In many societies, adolescent boys frequently feel pressured to perform while girls learn to be passive. Pregnancy outside marriage is often considered a catastrophe for a girl, and some cultures closely link female virginity to male honour. Homosexual relationships are also negatively viewed in many cultures.

Gender roles and relations, ideas and perceptions tend to be repeated from one generation to another. Society's views and values are internalised, shaping our attitudes, perceptions, behaviour and decisions later in life. Girls and boys are constrained by these perceptions and can prevent them from developing to their full potential. Such perceptions also influence the kinds of decisions boys and girls can take concerning their own lives, the games they play and the professions they want to pursue and are allowed to choose. Furthermore, it has an impact on their relations with the opposite sex.



<sup>8</sup> Developed by Lena Karlsson and Ravi Karkara, Save the Children Sweden, South and Central Asia.



## 3 Problem Analysis/Context

**T**here are a lot of documents and programmes available on ways of working with vulnerable groups. But they appear to be more 'need based' or have a 'welfare' approach that deal more with the consequences rather than the root causes of why children are a vulnerable group in the first place. Besides, the use of 'discrimination' as a means or tool for control through political, economic and cultural hegemony needs to be examined and worked with in a non-threatening manner. On closer scrutiny, it appears that these programmes are not holistic or rights-based, but rather ad hoc and/or deal with only one part of the problem.

There has been growing interest and work revolving discrimination, but the pace is slow. There appears to be limited information available on the issue particularly children's perception on discrimination, their coping mechanisms and resiliency.

### **Legislation**

Though most of the countries have at least one legislation (if not many) to implement the UNCRC and the principle of equality and non-discrimination, they are either not comprehensive or systematic. Sometimes, personal laws (which are discriminatory towards girls/women and castes) may take precedence over such legislations. There is a lack of adequate and comprehensive legislative framework to prevent and address discrimination against girls and children from vulnerable groups such as the disabled, HIV and AIDS affected and trafficked children.

The CRC Committee continually highlights the need to bring various policies and legislations which are complimentary to the UNCRC.

The Committee recommends that the State Party take all efficient measures to harmonise its domestic legislation fully with the provisions and principles of the Convention, in particular with regard to existing minimum ages of criminal responsibility and for marriage, child labour and harmful traditional practices affecting children.

- Para 13, Concluding Observations of the CRC Committee, Bangladesh,  
October 2003

The Committee recommends that the State party undertake a systematic review of all existing laws in order to bring them into conformity with the Convention and to consult with the different ethnic communities regarding the inclusion of their personal laws in this process of reform.

- Para 30, Concluding Observations of the CRC Committee, Sri Lanka, July  
2003

### **Data**

The absence of national and local level disaggregated statistics and data makes monitoring of actions to address discrimination of vulnerable groups extremely difficult. Without the presence of appropriate data, developing and implementing comprehensive legislation is difficult. Plus it makes it extremely difficult to assess whether actions and programmes are relevant and has had an impact on equity to services.

The Committee recommends that the State party develop a system of data collection and indicators consistent with the Convention and disaggregated by gender, age, and in different parishes and dependencies. This system should cover all children up to the age of 18 years, with specific emphasis on those who are particularly vulnerable, including children living in poverty, children with disabilities and children from single-parent families. It further encourages the State party to use these indicators and data in the formulation of laws, policies and programmes for the effective implementation of the Convention. The Committee recommends that the State party seek technical assistance from, inter alia, UNICEF, in this regard.

- Para 30, Concluding Observations of the CRC Committee, Nepal, June 2005

The lack of consistent and accurate data means that it contributes to the invisibility and marginalisation of vulnerable groups. Monitoring and promoting the rights of discriminated groups demands up-to-date and disaggregated data on their living conditions, health status, access to school, learning achievement and the degree of protection they enjoy against neglect, abuse, violence and exploitation.

The other problem with disaggregated data is that there may be limited resources (both technical and human resources) and capacity within organisations to gather the data. Furthermore, the most marginalised or discriminated children can often be situated in very remote areas, where geographically, access is difficult and time consuming rendering them 'invisible'.

### **Reporting Mechanism**

Most countries in the region do not have independent reporting mechanisms such as child ombudspersons<sup>9</sup> or a child rights desk. Regional mechanisms are almost nil except for SAARC which has till date been very quiet and not optimally been utilised in furthering rights of girls and boys.

...the Committee recommends that the State Party expedite, as much as possible, the establishment of an independent national commission for children in accordance with the Paris Principles relating to the status of national institutions...and on national human rights institutions, to monitor and evaluate progress in the implementation of the Convention at the federal and at the state level.

- Para 18, Concluding Observations of the CRC Committee, India, February 2004

...the Committee encourages the State party to strengthen the role of the Office of the Ombudsman in accordance with the Paris Principles... also encourages the State party to empower the department of children's rights within the Office of the Ombudsman to deal with complaints from children, and do so in a child-sensitive and expeditious manner, and also provide remedies for violations of their rights under the Convention. This department should be provided with adequate human and financial resources.

- Para 15, Concluding Observations of CRC Committee, Kyrgyzstan, November 2004

<sup>9</sup> Bangladesh is in the process of setting up an ombudsperson for children.

## **Organisations**

The other problem is that children's organisations have limited coverage on non-discrimination. The problem seems to be that organisations working with children are not integrated with the principle of non-discrimination. And for those organisations that work with discriminated groups in society, children do not seem to be their direct target group.

Save the Children Sweden partners have taken some measures to include children from various backgrounds in their programmes, but few organisations are challenging unequal power relations and patriarchal structures. Human rights organisations and others addressing various forms of discrimination seldom have a child focus. Gender is still seen as a women's issue and few organisations work in partnership with boys and men to challenge male sexual behaviour and discrimination. There are only a handful of organisations in the region working on discrimination against children due to religion, HIV and AIDS status and sexual preference.



## **4** Non-Discrimination as a Human Rights Principle

## **Protection against Discrimination**

Poverty, conflict, chronic social instability and preventable diseases such as HIV and AIDS threaten children's rights and sabotage their development. The situation is even worse for girls because of the multiple discriminations they face right across sectors of society in every country. Gender discrimination keeps young girls from school and from active and equal involvement in their communities.

Similar forms of discrimination is at the base of many of the violations of child rights, when specific groups of children face discrimination on account of their sex, colour, race, religion, political or other opinion, national, ethnic and social origin, property, disability, birth or other status. Disabled children, for example, are often excluded from mainstream education. Children of minority, indigenous or migrant background face discrimination in a number of ways. They are disproportionately represented among juveniles who are imprisoned, less likely to access quality and relevant education, more likely to be recruited as child soldiers, trafficked and exposed to hazardous work and sexual exploitation. Creating an environment where girls and boys are respected and cared for equally in early childhood is the first step towards breaking cycles of discrimination and disadvantage.

There are a number of instruments available to eliminate and prevent discrimination of children. They consist of (1) international treaties, conventions, and declarations; and (2) national constitutions, legislations, laws and polices.

### **International Treaties, Conventions and Declarations**

#### ***The United Nations Convention on the Rights of the Child***

The main international human rights treaty that directly relates and specifies the rights of the children is the United Nations Convention on the Rights of the Child (UNCRC) which came into force in 1989 and has been ratified by over 192 countries till date<sup>10</sup>. This makes it the most ratified of all international human rights treaties.

#### ***The UNCRC is based on the following key principles:***

- Non-discrimination (Article 2)
- Best interests of the child (Article 3)
- Accountability (Article 4)
- Survival and development (Article 6)
- Participation (Article 12)

These principles are the underlying values and features that form the basis of the whole Convention. When we look at any of the rights of the child, we should consider it in light of the above key guiding principles.

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<sup>10</sup> The United Nations Convention on the Rights of the Child is the most widely and rapidly ratified human rights treaty in history. Only two countries, Somalia and the United States, have not ratified this celebrated agreement. Somalia is currently unable to proceed to ratification as it has no recognised government. By signing the Convention, the United States has signaled its intention to ratify - but has yet to do so.

As in many other nations, the United States undertakes an extensive examination and scrutiny of treaties before proceeding to ratify. This examination, which includes an evaluation of the degree of compliance with existing law and practice in the country at state and federal levels, can take several years - or even longer if the treaty is portrayed as being controversial or if the process is politicised. For example, the Convention on the Prevention and Punishment of the Crime of Genocide took more than 30 years to be ratified in the United States and the Convention on the Elimination of All Forms of Discrimination against Women, which was signed by the United States 17 years ago, still has not been ratified. Moreover, the US Government typically will consider only one human rights treaty at a time. Currently, the Convention on the Elimination of All Forms of Discrimination against Women is cited as the nation's top priority among human rights treaties. (<http://www.unicef.org/UNCRC/faq.htm#008>)

## Article 2<sup>11</sup> (Non-discrimination)

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

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

The principle of non-discrimination implies that all children should enjoy their rights. It means that no child should be injured, privileged or punished by, or deprived of, any right<sup>12</sup> irrespective of the child's or his/her carer's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. Governments who have ratified the UNCRC are obliged to take measures to combat patterns of discrimination.

Although the essence of the UNCRC is to address discrimination against children as a group, it also recognises that children can face further discrimination due to their particular circumstances or status. However, non-discrimination does not mean that all children should always be treated the same. Preferential treatment (or positive discrimination/affirmative actions) may be required to address discrimination and empower those who face discrimination, provided that such a group of children desire such measures.

Disaggregated statistics and information on gender, age, disability, religions, ethnicity, showing trends over time, are important tools in identifying discrimination and measuring its impact. The CRC Committee emphasises that instead of changing the behaviour of children who are discriminated against, the emphasis should be on changing the legal framework, the power structures, the attitudes of those who discriminate, the physical environment, and the balance of resources that perpetuate discrimination.

The principle of non-discrimination needs to be considered with the other four main principles of the UNCRC. The key feature of Article 6 is the evolving capacities of the child, which assesses a child's ever-evolving developmental stage in relation to its age. Child development is seen as a holistic concept that considers the whole child: their physical, cognitive, emotional, social, cultural and spiritual development. Approaches to development must be multi-disciplinary and cross-sectoral. Every girl and boy has the right to fulfil her or his potential. Thus the article implies that the state and other duty bearers must protect and fulfil this right from a non-discrimination perspective too.

Similarly, Article 12 on child participation is intrinsically linked to non-discrimination. The duty bearers must ensure that the views and concerns of the most discriminated girls and boys are incorporated as the first priority.

<sup>11</sup> In Karlsson, L. and Karkara, R., 2004, "Confronting Discrimination in South Asia," in Theis, J., Promoting Rights-Based Approaches: Experiences and Ideas from Asia and the Pacific, Save the Children Sweden, HQ

<sup>12</sup> UNICEF, [www.unicef.org/UNCRC/UNCRC.htm](http://www.unicef.org/UNCRC/UNCRC.htm)

Under Article 3, the best interests of the child must be considered by the duty bearers when making decisions, laws and allocating resources and they 'must consider whether the laws being adopted or amended will benefit children in the best possible way<sup>13</sup>, with the maximum allocation of resources directed towards this. This 'best interest' reflects the essence of the entire Convention and should always be related to all articles of the Convention. In all actions concerning children, the best interests of the child must be a primary consideration.

The above are the key guiding principles of the UNCRC. There are other articles of the UNCRC which apply directly to non-discrimination. For example, Article 23 recognises the rights of mentally or physically disabled children to enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

Article 30 recognises the rights of indigenous, ethnic, religious or linguistic groups and children belonging to other minority groups to enjoy all rights as others as well as to enjoy their own culture, religion and or use their own language.

In addition, all the articles of the UNCRC are universal, indivisible and inalienable. In other words, all the articles apply to all children, all over the world. They are inter-related and interconnected; all articles and rights are at the same level and are equally applicable. The rights are absolute and cannot be taken away or given to someone else.

In conclusion, the UNCRC interprets non-discrimination similar to the other rights in the UNCRC, which apply to all children without exception. It is the duty of the State to ensure that children are protected from discrimination by ensuring that their rights are fulfilled by taking action to promote the rights as envisioned under the UNCRC.

### *Other International Human Rights Instruments<sup>14</sup>*

Besides the UNCRC, other international human rights instruments guarantee the principle of 'non-discrimination' through 'universality' of equal rights of all peoples. Non-discrimination is at the heart of the concept of human rights.

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

- UDHR, Article 1

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

- UDHR, Article 1

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<sup>13</sup> Ibid.

<sup>14</sup> This section only highlights the main principals on non-discrimination. Treaties cited here have been annexed.

Though the UDHR is not a binding document, it is considered as international customary law and hence morally binding on all. The UDHR is the source of the ICCPR and ICESR Conventions.

While the UNCRC covers the civil, political, social, economic and cultural rights of children, these rights have been divided into two UN conventions: the Covenant on the Civil and Political Rights; and the Covenant on the Economic, Social and Cultural Rights. Both these instruments reinforce the 'universality' of rights and together with the UDHR are considered the United Nations Bill of Rights.

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

- ICCPR, Article 2.1

The State Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

- ICESCR, Article 2.2

These core documents are supplemented and enhanced by a range of conventions, declarations and resolutions. To promote and focus the rights of certain vulnerable groups who may have special needs or are generally discriminated, the principles of the International Bill of Rights have been further elaborated in the following conventions: UNCRC, CEDAW and CERD.

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

- CEDAW, Article 1

In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

- CERD, Article 1.1

What needs to be understood is that these conventions were developed and ratified at certain phases in human development. However, times change (for example, due to globalisation and conflict) and the conventions are elaborated and enunciated in the form of General Recommendations in consultations with governments, civil society and all other relevant stakeholders. So in essence, these conventions have a life of their own which reflect our changing times BUT without deviating from the basis of the existing international human rights treaties.

In recognition of values and norms which are evolving within the socio-economical and cultural times and to be inclusive of all groups, the Human Rights Committee (HRC) has been working on a Draft Convention on Disability. With respect to this, the General Assembly established an Ad Hoc Committee in 19 December 2001, 'to consider proposals for a comprehensive and integral international convention, to promote and protect the rights and dignity of persons with disabilities, based on the holistic approach in the work done in the fields of social development, human rights and non-discrimination and taking into account the recommendations of the Commission on Human Rights and the Commission for Social Development.'<sup>15</sup>

These documents are legally and morally binding on governments which have ratified the treaties. Some would argue that these treaties have become legally binding and are considered to be international customary law, which all States in the world are required to abide by whether they have ratified the conventions or not. Human rights treaties regulate the obligations of States towards persons within their own territory, rather than towards other States.

The role of States in protecting, fulfilling and promoting human rights of its citizens is to challenge ingrained prejudice, dismantle legal and de facto discrimination, and ensure that all are treated with dignity and respect. Furthermore, States are obligated not only to respect, but need to be proactive in ensuring that all children's rights are protected and promoted.

S=signatory to the treaty. This indicates that the concerned State Party has shown an interest in this treaty, but has not ratified it. Ratification refers to when the concerned State Party has taken on the obligation to abide by the appropriate treaty it has ratified and is legally and morally bound by it.

### *Ratification of International Treaties<sup>16</sup>*

	ICESCR	ICCPR	CERD	CEDAW	UNCRC
Afghanistan	24 Apr 83	24 Apr 83	05 Apr 83	04 Apr 03	27 Apr 94
Bangladesh	05 Jan 99	06 Dec 00	11 Jul 79	06 Dec 84	02 Sep 90
Bhutan			26 Mar 73s	30 Sep 81	02 Sep 90
India	10 Jul 79	10 Jul 79	04 Jan 69	08 Aug 93	11 Jan 93
Kyrgyzstan	07 Oct 94	07 Jan 95	05 Oct 97	12 Mar 97	06 Nov 94
Maldives			24 May 84	31 Jul 93	13 Mar 91
Nepal	14 Aug 91	14 Aug 91	01 Mar 71	22 May 91	14 Oct 90
Pakistan			04 Jan 69	11 Apr 96	12 Dec 90
Sri Lanka	11 Sep 80	11 Sep 80	20 Mar 82	04 Nov 81	11 Aug 91
Tajikistan	04 Apr 99	04 Apr 99	10 Feb 95	25 Nov 93	25 Nov 93

<sup>15</sup> General Assembly resolution 56/168, Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, 19 December 2001, <http://www.un.org/esa/socdev/enable/rights/ahc7.htm>

<sup>16</sup> All data from: Office of the United Nations High Commissioner for Human Rights: Status of Ratification of the Principal International Human Rights Treaties, as of 9 June, 2004.

As can be seen from the table above, all the States in South and Central Asia (including Kyrgyzstan and Tajikistan) have ratified the UNCRC.

### Reservations

Many governments, when ratifying international human rights instruments can enter reservations to certain articles or parts of articles that may be inconsistent with their legislations or those that they may not be able to implement immediately (usually citing economic and social problems). Reservations are made with the understanding that, over time, they will be removed. However, reservations which undermine the very core of treaties are not permissible and where they do occur, can be refuted by other States party to the respective treaty.

When examining the reservations made in South and Central Asia, there appears to be no direct reservations to Article 2 on the principle of 'non-discrimination' per se, but the very concept of non-discrimination is challenged on the grounds of reservations entered under specific articles, for example, equality between sexes and right to choose one's religion. For the Muslim countries, the reservations are generally entered based on religious grounds such as:<sup>17</sup>

"The Government of the People's Republic of Bangladesh ratifies the Convention with a reservation to Article 14, paragraph 1.<sup>18 19</sup>

Also Article 21 would apply subject to the existing laws and practices in Bangladesh."  
- Reservation by Bangladesh

"The Government of the Republic of Maldives expresses its reservation to paragraph 1 of Article 14 of the said Convention on the Rights of the Child, since the Constitution and the Laws of the Republic of Maldives stipulate that all Maldivians should be Muslims."  
- Reservation(s) by Maldives

Pakistan is an interesting case and warrants a slightly more in-depth study. Pakistan made a reservation that had an impact on all the articles of the Convention and was deemed to undermine the Convention.

"Provisions of the Convention shall be interpreted in the light of the principles of Islamic laws and values".  
- Reservation(s) by Pakistan

Since this undermined the Convention, six countries<sup>20</sup> objected to the reservation and the Secretary General requested Pakistan to withdraw it, which was accordingly withdrawn on 23 July, 1997.

<sup>17</sup> The reservations made by South and Central Asia countries to the UNCRC. This list does not include the two optional protocols to the UNCRC ('Optional Protocol on the sale of children, child prostitution and child pornography, 2002' and (Optional Protocol on the involvement of children in armed conflicts, 2000)

Afghanistan, declaration, Article 51

The Government of the Republic of Afghanistan reserves the right to express, upon ratifying the Convention, reservations on all provisions of the Convention that are incompatible with the laws of Islamic Shariah and the local legislation in effect.

Maldives 20, 21

Since the Islamic Shariah is one of the fundamental sources of Maldivian Law and since the Shariah does not include the system of adoption among the ways and means for the protection and care of children contained in Shariah, the Government of the Republic of Maldives expresses its reservation with respect to all the clauses and provisions relating to adoption in the said Convention on the Rights of the Child.

<sup>18</sup> Article 14: Right to freedom of thought, conscience and religion.

<sup>19</sup> Bangladesh has made a similar type of reservation under CEDAW Article 2 (equality of women) and 16 (marriage and family life) citing that it conflicts with Sharia law based on the Holy Quran and Sunna.

Whereas the Muslim States or predominantly Muslim majority countries cite religious rationale when entering reservations, India on the other hand notes poverty and economic disadvantage in implementing the Convention.

"While fully subscribing to the objectives and purposes of the Convention, realising that certain of the rights of child, namely those pertaining to the economic, social and cultural rights can only be progressively implemented in the developing countries, subject to the extent of available resources and within the framework of international co-operation; recognising that the child has to be protected from exploitation of all forms including economic exploitation; noting that for several reasons children of different ages do work in India; having prescribed minimum ages for employment in hazardous occupations and in certain other areas; having made regulatory provisions regarding hours and conditions of employment; and being aware that it is not practical immediately to prescribe minimum ages for admission to each and every area of employment in India - the Government of India undertakes to take measures to progressively implement the provisions of Article 32, particularly paragraph 2 (a), in accordance with its national legislation and relevant international instruments to which it is a State Party."

- Reservation by India

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<sup>20</sup> Countries making objection to Pakistan's reservation: Finland, Ireland, Netherlands, Norway, Portugal and Sweden. Office of the High Commissioner for Human Rights, <http://www.unhcr.ch/tbs/doc.nsf/>, (downloaded August 2006).



## 5 Constitutional Insights of South and Central Asia

**M**any countries in the South and Central Asia region have undertaken some reforms to bring their legislations inline with the requirements of the United Nations Convention on the Rights of the Child.

### **Equality guaranteed under the constitutions <sup>21</sup>**

*Constitution of the Islamic Republic of Afghanistan, 2004<sup>22</sup>*

#### **Preamble**

8. For creation of a civil society free of oppression, atrocity, discrimination, and violence and based on the rule of law, social justice, protection of human rights, and dignity, and ensuring the fundamental rights and freedoms of the people.

#### **Article 22 [Equality]**

- (1) Any kind of discrimination and privilege between the citizens of Afghanistan are prohibited.
- (2) The citizens of Afghanistan—whether man or woman—have equal rights and duties before the law.

*Constitution of the People's Republic of Bangladesh <sup>23</sup>*

#### **27. Equality before Law:**

All citizens are equal before law and are entitled to equal protection of law.

#### **28. Discrimination on grounds of religion, etc.**

- (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth.
- (2) Women shall have equal rights with men in all spheres of the State and of public life.
- (3) No citizen shall, on grounds only of religion, race, caste, sex or place of birth be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort, or admission to any educational institution.

*Constitution of India, 1949 <sup>24</sup>*

#### **Right to Equality**

14. Equality before law- The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.
  - (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

*Constitution of the Kyrgyz Republic, 1998<sup>25</sup>*

#### **Article 14**

1. Every citizen of the Kyrgyz Republic by virtue of his/her citizenship enjoys rights and bears responsibilities.

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<sup>21</sup> Constitution of Bhutan: Bhutan has no constitution till date though a draft has been drawn up and is planned to be circulated among its citizens for suggestions and feedback. The Draft Constitution does outline rights such as a society with democracy, equality, social security, free healthcare and education. Bhutan is ruled by absolute monarchy under the Wangchuk dynasty that came to power in December 1907. It is heading towards the path to democracy by handing over day-to-day affairs to a council of ministers at the millennium. It is probably the only country in the world where there are no basic laws and the Royal Decrees are still 'law'. Kathmandu Post (Article No 62), 26 December 2002, Bhutan's Constitution and Refugees, [http://www.geocities.com/articlesonbhutan/politics\\_pages/constituitonrefugees.htm](http://www.geocities.com/articlesonbhutan/politics_pages/constituitonrefugees.htm) (21 November 2005)

<sup>22</sup> Constitution of the Islamic Republic of Afghanistan, 2004, [http://www.oefre.unibe.ch/law/icl/af00000\\_.html#1000\\_](http://www.oefre.unibe.ch/law/icl/af00000_.html#1000_), (downloaded 12, October 2005)

<sup>23</sup> The Constitution of the People's Republic of Bangladesh, 1972, <http://www.pmo.gov.bd/constitution/> (15 September 2005).

<sup>24</sup> The Constitution of India, 1949, <http://www.constitution.org/cons/india/p03014.html> (21 November 2005)

<sup>25</sup> Constitution of the Kyrgyz Republic, (As amended 21 October 1998 by the Law of the Kyrgyz Republic, N134)

*The Constitution of the Republic of Maldives*<sup>26</sup>

13. Maldivian citizens are equal before and under the law and are entitled to the equal protection of the law.

*Constitution of the Kingdom of Nepal, 1990*<sup>27</sup>**11. Right to Equality:**

(1) All citizens shall be equal before the law. No person shall be denied the equal protection of the laws..

(2) No discrimination shall be made against any citizen in the application of general laws on grounds of religion (dharma), race (varya), sex (li\_ga), caste (jât), tribe (jâti) or ideological conviction (vaicârik) or any of these.

(3) The State shall not discriminate among citizens on grounds of religion, race, sex, caste, tribe, or ideological conviction or any of these.

*Constitution of the Islamic Republic of Pakistan, 1973*<sup>28</sup>**Preamble**

Therein shall be guaranteed fundamental rights, including equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality;

**25.**

(1) All citizens are equal before law and are entitled to equal protection of law.

(2) There shall be no discrimination on the basis of sex alone.

(3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.

*Constitution of the Democratic Socialist Republic of Sri Lanka, 2000*<sup>29</sup>**12. Right to equality**

(1) All persons are equal before the law and are entitled to the equal protection of the law.

(2) No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds.

*Constitution of Republic of Tajikistan, 1994*<sup>30</sup>**Article 17:**

All persons are equal before the law and the courts. The government guarantees the rights and freedom of every person regardless of ethnicity, race, sex, language, faith, political beliefs, education, or social or property status. Men and women have equal rights.

***Recognition of International Treaties and Human Rights***

After ratifying the International Human Rights instruments, many of which have been recognised as international customary law, States are under obligation to reflect these principles into their legislation. For example, the Nepal Treaty Act of 1990 states that where there is a conflict between the national laws and international human rights treaties, the international human rights treaties will take

<sup>26</sup> The Constitution of the Republic of Maldives, <http://www.presidencymaldives.gov.mv/download/constitution.pdf> , (16 Sept 2005)

<sup>27</sup> The Constitution of the Kingdom of Nepal, 1990

<sup>28</sup> Islamic Republic of Pakistan, PART II: Fundamental Rights and Principles of Policy, <http://www.pakistani.org/pakistan/constitution/part2.ch1.html> (21 November 2005)

<sup>29</sup> The Constitution of the Democratic Socialist Republic of Sri Lanka, <http://www.priu.gov.lk/Cons/1978Constitution/Introduction.htm> (21 November 2005)

<sup>30</sup> Constitution of the Republic of Tajikistan, Dushanbe 1994, <http://unpan1.un.org/intradoc/groups/public/documents/untc/unpan003670.htm> (1 November 2005)

precedence. We see a similar thing under the Afghanistan Constitution, where it states:

### **Constitution of the Islamic Republic of Afghanistan, 2004<sup>31</sup>**

#### **Article 7 (International Law)**

*(1) The State shall abide by the UN charter, international treaties, international conventions that Afghanistan has signed, and the Universal Declaration of Human Rights.*

### **Constitution of the People's Republic of Bangladesh<sup>32</sup>**

#### **11. Democracy and human rights**

*The Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed <sup>11\*</sup> <sup>12</sup>, and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured].*

### **Constitution of the Kyrgyz Republic, 1998**

#### **Article 16**

*1. In the Kyrgyz Republic, basic human rights and freedoms are recognised and guaranteed in accordance with universally accepted norms and principles of international law, international treaties and agreements concerning human rights which are ratified by the Kyrgyz Republic.*

#### **Article 17**

*1. In the Kyrgyz Republic, no laws shall be issued which abolish or infringe upon human rights and freedoms.*

### **Constitution of Republic of Tajikistan, 1994**

*Article 10: .... International legal acts recognised by Tajikistan are a constituent part of the legal system of the republic. In the case of a discrepancy between the laws of the republic and recognised international legal acts, the norms of the international legal acts are applied. Laws and international legal acts recognised by Tajikistan enter into force after their official publication.*

### **Positive Discrimination of Discriminated Groups**

States have also taken initiatives to provide space for positive discrimination/affirmative actions/special provisions for the advancement of children, especially the vulnerable groups. Positive discrimination is usually only in place till the status of the discriminated groups is on par with others in the general population.

### **Constitution of the People's Republic of Bangladesh<sup>33</sup>**

#### **28. Discrimination on grounds of religion, etc.**

*(4) Nothing in this article shall prevent the State from making special provision in favour of women or children or for the advancement of any backward section of citizens.*

### **Constitution of India, 1949**

The Indian Constitution under Article 17<sup>34</sup> abolished 'untouchability' and its practice, and includes a provision for punishment. In line with this, the State says:

<sup>31</sup> Afghanistan Constitution, 2004

<sup>32</sup> The Constitution of the People's Republic of Bangladesh, 1972, <http://www.pmo.gov.bd/constitution/> (15 September 2005).

<sup>33</sup> The Constitution of the People's Republic of Bangladesh, 1972, <http://www.pmo.gov.bd/constitution/> (15 September 2005).

<sup>34</sup> Article 17 - "Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law. The Constitution of India, 1949.

**Article 17**

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(3) Nothing in this article shall prevent the State from making any special provisions for women and children.

(4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

*Constitution of the Kingdom of Nepal<sup>35</sup>***11. Right to Equality**

Provided that special provisions may be made by law for the protection and advancement of the interests of women, children, the aged or those who are physically or mentally incapacitated or those who belong to a class which is economically, socially or educationally backward.

The Constitution of the Kingdom of Nepal as with India is very specific and explicit on the non-discrimination of castes and untouchables and furthermore provides for punishment.

**11. Right to Equality**

(4) No person shall, on the basis of caste, be discriminated against as untouchable, be denied access to any public place, or be deprived of the use of public utilities. Any contravention of this provision shall be punishable by law.

In addition to the Constitutional provisions, the Convention can be invoked before the court in some countries, for example in India and Nepal. But despite this, many a times, domestic legislations, in particular, customary, personal and religious laws which govern family matters, are still not in conformity with the principles of the Convention<sup>36</sup> (such as India, Bangladesh).

Scrutinise carefully existing legislative and other measures, including religious and personal laws, both at the federal and state levels, with a view to ensuring that the provisions and principles of the Convention are implemented throughout the State party.

- Para 10, Concluding Observations of the CRC Committee, India, February 2004

*Constitution of the Islamic Republic of Pakistan, 1973***Preamble**

Wherein adequate provision shall be made to safeguard the legitimate interests of minorities and backward and depressed classes;

**26.**

(1) In respect of access to places of public entertainment or resort not intended for religious purposes only, there shall be no discrimination against any citizen on the ground only of race, religion, caste, sex, residence or place of birth.

(2) Nothing in clause (1) shall prevent the State from making any special provision for women and children.

<sup>35</sup> The Constitution of the Kingdom of Nepal, 1990

<sup>36</sup> Concluding Observations of the Committee on the Rights of the Child: India, February 2004

### **Legislations and Actions to Promote the Convention**

Countries have also developed National Plan of Action (NPA) to further the Convention, but many a time NPAs are not always reflective of children's rights or include all principles of the Convention.

#### **Bangladesh has made positive development in the areas of children's human rights including:**

- Formulation of a revised National Plan of Action for Children
- National Plan of Action to Combat Sexual Abuse and Exploitation, including Trafficking, 2002: trafficking for sexual exploitation, domestic labour and camel jockeying is still significantly high; providing psychosocial support is among long term concrete plans of the State.
- Suppression of Violence against Women and Children Act, 2000: is rarely implemented and prosecution of perpetrators is rare even when the crime is serious due to societal attitudes.
- Acid Control Act 2002 and Acid Control Prevention Act 2002: inefficient implementation of the Act including care, recovery and reintegration of victims.

#### **Bhutan has undertaken or proposed legislation/ measures on the following:**

- 1993 Rape Act: there is insufficient data and awareness regarding the phenomenon of sexual exploitation of children in Bhutan.
- Draft Immoral Trafficking Act: Again, there is insufficient data and awareness regarding the phenomenon of sexual exploitation of children in Bhutan.
- Marriage Act 1980 has been amended.
- Draft juvenile justice Act: silent on minimum age of criminal responsibility, slow in adopting this act and criminal procedure legislation.
- Draft Civil and Criminal Codes: does not reflect comprehensive rights based approach.
- 1997 School Code of Conduct: to respect the views of children in schools, but traditional attitudes towards children in society at large and within families may limit the exercise of this right.

Though Bhutan has proposed legislative measures with respect to child rights, they do not appear to reflect a comprehensive rights-based approach to the implementation of the Convention.<sup>37</sup> In addition to the above, Bhutan has incorporated the goals contained in the World Declaration and Plan of Action of the 1990 World Summit for Children in their development plans.

Bhutan has also started the Joint Verification Talks with Nepal but the verification process of refugees and their children is progressing at a very slow rate.

#### **India has introduced:**

Immoral Traffic and Prevention Act, 1986, but does not define trafficking and limits its scope to sexual exploitation.

- Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989 - but many violations are still occurring and only a few of these violations are dealt by courts and have failed to set up special courts to deal with this Act.

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<sup>37</sup> Concluding Observations of the Committee on the Rights of the Child: Bhutan, 9 July 2001

- Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993. These need to be fully implemented, people's awareness raised, including meetings with religious leaders to change prevailing attitudes.
- Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection Act) 1994: this needs to be implemented and awareness raised regarding the Act.
- National Plan of Action for the Girl Child and Platform for Action: However, discriminatory societal attitudes and harmful practices towards girls are still persistent and is reflected in low enrolment and high dropout rates, early or forced marriages and religion based personal laws which perpetuate gender discrimination in areas such as marriage, divorce and inheritance.
- National AIDS Prevention and Control Policy, 2001: reports abound of rising number of children infected and/or affected by HIV and AIDS and discrimination faced by these children in society and in the educational system.
- Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995: disability was taken account of in 2001 census, but the country still lacks comprehensive statistical data and policy for disabled children who face widespread discrimination, lack of facilities and services.
- Dowry Prohibition Act, 1961, The Karnataka Devadasis (Prohibition of Dedication) Act, 1982 and Rules 1982: harmful traditional practices are still in existence, especially dowry is widely practised. There is lack of enforcement of the above mentioned Acts.
- Child Marriage Restraint Act, 1929: a high percentage of early and forced child marriage is still practiced.

#### Kyrgyzstan has introduced:

- New Generation, the National Programme and Plan of Action for the Realisation of Children's Rights (upto 2010).
- Children's Code: not in compliance with the Convention, especially in reproductive and adoption procedures.
- National Commission for Minors: lacks permanent mechanism to coordinate the policies and activities of children's rights being undertaken by various government ministries, NGOs and international agencies; suffers from limited resources.
- Law on the People's Rights Defenders: has established ombudsperson and specific department dealing with children's rights, but lacks power to receive and address individual complaints from children.
- Marriage and Family Code: lacks mechanism to monitor adoption; secrecy of adoption or right of adopted child to contact/know his/her biological parents.
- Law on Protection from Violence, 2003: needs to be monitored and enforced especially with abuse and neglect in families still prevalent; lacks recovery and counselling services are insufficient.
- Coordination Council on Child Labour, 2004: child labour is still prevalent and lacks official data.
- Minors' Rights (Protection and Defence) Act: is not enforced properly.

#### Maldives has introduced:

- Law on the Protection of the Rights of the Child, 1991.
- National Plan of Action.
- National Council for the Protection of the Rights of the Child: monitors goals set by the NPA and the Unit for the Rights of the Child.
- Penal code and the Law on the Protection of the Rights of the Child: not compatible with Article 37 (right not to be punished in a cruel way); Article 39 (right to help if hurt, neglected or badly treated) and Article 40 (right to defence).

#### Nepal has introduced:

- Child Labour (Prohibition and Regularisation) Act 2001: significant proportions of children are still working as labourers and in hazardous conditions, implementation of legislation weak due to lack of labour inspectors, and Act only applies to formal sector.
- Children's Act, 1992: plans to amend this legislation in line with the Convention, but progress is slow and is not fully enforced. Under this Act, corporal punishment is recognised in homes, schools and other institutions of child care. Lacks complaint filing mechanisms in childcare homes and designated places of safety for child victims of abuse and neglect.
- Human Trafficking and Control Act,: a significant number of children are still trafficked for sexual exploitation and bonded labour; existing legal protection and implementation of the Act is inadequate.
- Kamaiya Prohibition Act, 2002: a large number of children are still working as bonded labourers and face serious difficulties in housing, work and education.
- National Plan of Action for Children, 2005-2015.
- Inclusion of child development policies in the Ninth Plan (1997-2002).
- National Human Rights Commission, 2000 has a Child Rights Desk: but the mandate of this Desk and the access and availability to complaint mechanisms to all children is limited.
- National Dalit Commission, 2002.
- Children's Clubs in more than 20 districts.
- National Poverty Alleviation Fund.
- Mandatory Birth Registration: persistent non registration of birth exists, especially in rural areas.
- Disabled Protection and Welfare Act, 1982 and National Disability Service Coordination Committee, 2000: lacking in implementation of legislation, ineffective resources, early detection and intervention; insufficient efforts to facilitate inclusion into the educational system and society in general.

#### Pakistan has introduced:

- Ordinance for the Prevention and Control of Human Trafficking, 2002: significant numbers of children are still trafficked for sexual exploitation, bonded labour and camel jockeying.
- Juvenile Justice System Ordinance, 2000: poor implementation and many in authoritative positions are unaware of its existence.
- Established 49 Special Education Centres and disabled-friendly initiatives in cities: limited integration of disabled children into schools, social events and cultural activities still persistent.

- Introduction of birth registration in refugee camps, May 2002: Afghan refugee children living in harsh conditions with scarce water, food and limited shelter and medical care.

#### Sri Lanka has introduced:

- National Human Rights Commission, 1997: also investigates complaints regarding violations of children's rights, but awareness of this procedure needs to be conveyed to children. It also lacks sufficient human and material resources.
- National Child Protection Authority, 1999: mandate not clearly defined and ineffective coordination between departments.
- Is in the process of amending the Orphanages Ordinance No. 22, 1941: to penalise orphanages running without licence, code of conduct and monitor them regularly.
- Penal Code (Amendment) Act No. 22, 1995: to protect children from sexual exploitation, however legislation is not properly enforced and victims do not receive adequate recovery assistance.

#### Tajikistan has introduced:

- Is looking to establish children's legal centre and reforming law and practice in juvenile justice.<sup>38</sup>

The problems and barriers in implementing legislations are many-fold, which can range from or a combination of: lack of coordination between different departments; lack of awareness; lack of both human and financial resources and capacity; as well as resistance by dominant groups. Coordination is critical for the effective implementation of the Convention in order to eliminate discrimination. This can be further enhanced by putting in place independent monitoring mechanisms like the National Human Rights Commissions (NHRC), which can evaluate and monitor progress in the implementation of the Convention.

The coordination between different sectors for the implementation of the UNCRC is another concern for the Committee and is usually highlighted in its Concluding Observations:

Although encouraged by the establishment of mechanisms such as the National Monitoring Committee (NMC) and the National Child Protection Authority (NCPA) and their respective monitoring and child protection committees at the provincial and district level, the Committee is concerned that these bodies and others like the Department for Probation and Child Care Services (DPCCS) do not provide effective coordination of the implementation of the Convention. It is further concerned that the roles of these bodies are not clearly defined, which may contribute to duplication of efforts and a lack of effective cooperation.

- Para 13, Concluding Observations of the CRC Committee, Sri Lanka, July 2003

The Committee is concerned that there remains a lack of administrative coordination and cooperation at the national and local government levels in the implementation of the Convention.

<sup>38</sup> International Policy and Programmes, Children's Legal Centre, <http://www.essex.ac.uk/armedcon/unit/projects/clc/default.htm#tajikistan>

In the light of the 1993 Vienna Declaration and Programme of Action (Para. 71), the Committee recommends that the State party pursue the preparation and development of a comprehensive national plan of action to implement its obligations under international human rights instruments, including the Convention, through an open and consultative process. Attention should be given to intersectoral coordination and cooperation at and between national and local levels of government. The Committee recommends that the State party provide adequate support to the local authorities, including the development of professional capacity, for the implementation of the Convention.

- Para 8-9, Concluding Observations of the CRC Committee, Tajikistan, October 2000

This can be achieved in collaboration with NGOs who have been very active in the implementation of the Convention. Since UN agencies, INGOs and NGOs have a lot of experience in service delivery and involved in preparing various programmes related to the Convention, the Government should work with them in a more systematic and coordinated manner in trying to eliminate discrimination of all vulnerable children in both service delivery and in supporting the process of formulating policies on non-discrimination of children.

Throughout the Concluding Observations, the Committee recommends coordinating and seeking technical assistance from UN agencies (in particular UNICEF) and other INGOs in implementing many of the principles of the UNCRC.

The Committee recommends that the State party continue to upgrade its system of data collection to cover all areas of the Convention and ensure that all data and indicators are used for the formulation, monitoring and evaluation of policies, programmes and projects for the effective implementation of the Convention. The State party should consider seeking technical assistance from, among others, UNICEF and UNFPA.

- Para 20, Concluding Observations of the CRC Committee, Sri Lanka, July 2003

The Committee recommends that the State party develop an ongoing programme for the dissemination of information regarding the implementation of the Convention among children and parents, civil society and all sectors and levels of government. Moreover, the Committee recommends that the State party strengthen its efforts and develop systematic and ongoing training programmes on the provisions of the Convention for all professional groups working with children (e.g. legislators, judges, lawyers, law enforcement officials, civil servants, local government officials, personnel working in institutions and places of detention for children, teachers, health personnel, including psychologists, and social workers). The Committee encourages the State party to seek technical assistance from, inter alia, the Office of the High Commissioner for Human Rights, and UNICEF, in this regard.

- Para 19, Concluding Observations of CRC Committee, Tajikistan, October 2000



## 6 Prevalence of Discrimination against Vulnerable Groups<sup>39</sup>

**D**iscrimination can occur in a variety of settings. It can occur at home, at school and in any community setting. There is very little information available on discrimination at home, except that of discrimination towards girls. But there does appear to be a general consensus that children who are discriminated, are most likely to be the most vulnerable, for example, disabled girls. This also holds true in the community setting. For example, if a girl happens to be disabled or belongs to an indigenous group, she is more likely to be discriminated against compared to other girls. Most literature, however, concentrates on discrimination in the educational system.

As mentioned in the preceding chapters, discrimination can also be distinguished between that which is based on identities of children and parents (for example, disability, caste, class, gender, age and so forth) and the ways in which children are exploited because of their vulnerable status (for example, education, health care, nutrition standards, sexual abuse, exploitation and so on).

### *Discrimination in Educational Setting*

#### **The UNCRC states that education should not only be to:**

...make primary education compulsory and available free to all; encourage the development of different forms of secondary education. ....

- Article 28, UNCRC

#### **But that the education of a child shall be directed to:**

The development of the child's personality, talents and mental and physical abilities to their fullest potential. ... preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples. ....

But very often, school, teachers and other children perpetuate discriminatory practices against children. The school is unfortunately a place where many children are discriminated. Existing information suggests that some teachers discriminate against children based on their gender or on the basis of economical status.

*"In my school, teachers take more care of the upper caste children."*

-- A girl in Tamil Nadu (India) <sup>40</sup>

*"Sometimes, the teachers only give attention to the rich people, not to poor people."*

- A girl in Luarduj (Afghanistan) <sup>41</sup>

*"Because of the new regime something has gone wrong. For example, the rich can go to Estaqlal High School but they will not accept poor people."*

- A boy in Kabul (Afghanistan) <sup>42</sup>

Adult discrimination in schools comes normally from teachers, but the system itself and the institution too can also perpetuate discrimination. The old, familiar tradition of 'adult versus child' is enacted here. Discrimination is perpetuated in the form of 'teacher versus student (child)'. In most government schools, the system

<sup>39</sup> Where available, the age, sex and location of children have been included.

<sup>40</sup> Save the Children, 2004, Seven Windows of India, Documentary (taken from transcript).

<sup>41</sup> Ibid.

<sup>42</sup> Ibid. cl. 41

relies on the premise that the teacher knows everything and the child should obey, listen and follow. There is no scope of speaking, of enquiring (the basis for learning) of interacting, confronting or even of questioning anything.

"We are not allowed to express our ideas to the school teachers."

- An adolescent boy in Kabul (Afghanistan) <sup>43</sup>

Schools are places where discrimination is perpetuated and practiced by the teachers and by children against other children.

"Beating and discrimination in school makes me sad."

- An adolescent boy Herat (Afghanistan) <sup>44</sup>

### **Discrimination Based on Occupation**

Similar to discrimination based on identities, some occupations or trades can also be highly stigmatising, for example, sweepers, children who empty dry latrines and rag pickers.

### *Discrimination based on Gender*

Sex<sup>45</sup> refers to the physical and biological differences between males and females. It is universal and static. On the other hand, gender refers to the expectations people have of someone because they are male or female. It refers to socially constructed relationships between different sexes. The gender roles may change over time or generations.

Girls and women often find themselves in subordinate positions to men and are socially, culturally and economically dependent on them. Girls and women are largely excluded from decision making, have limited access to and control over resources, are restricted in their mobility, and are often under threat of violence from male relatives. Due to their lower value in society, girls are less likely to be represented in other areas which affect their life chances such as access to education, health and nutrition. On the other hand, boys are perceived to have economic, social or religious utility; whereas girls are often felt to be an economic liability because of the dowry system.

Discrimination and violence against girls begins at the very conception of the girl child and continues unabated throughout their lives. Girls often have less access to nutrition, physical and mental health care and education and enjoy fewer rights, opportunities and benefits of childhood as compared to boys. They are often subjected to various forms of exploitation, including sexual exploitation, violence and harmful practices, such as female infanticide and prenatal sex selection, incest, female genital mutilation/cutting, early marriage and forced marriage.

Gender related violence and discrimination has led to differences in health status of girls and women which is reflected in an unbalanced sex ratio. It is estimated that 60-100 million girls are 'missing' worldwide, and the imbalanced sex ratios of South Asian countries contribute a large proportion of this number.<sup>46</sup> A large portion of these missing girls can be attributed to female foeticide,

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> Lena Karlsson and Ravi Karkara in various Gender Trainings, 1992-2002

<sup>46</sup> Sen, A., 1992, Missing Women, *BMJ*, 304:587-8. [ISI][Medline]; and Watts C., Zimmerman C. Violence against Women: Global scope and magnitude. *Lancet* 2002; 359:1232-7. [CrossRef][ISI][Medline]; in Fikree, F. Fariyal and Pasha, Omrana, 2004, Role of Gender in Health Disparity: The South Asian context, <http://bmj.bmjournals.com>

infanticide, trafficking and death due to neglect, lack of food and access to health. For example, according to a report, "female foeticide is reported in 27 of India's 32 states, and the impact on the sex ratio among young children is alarming. The 2001 census shows only 927 girls for every 1,000 boys (compared to 945 girls in 1991). The declining numbers are most pronounced in the economically advanced states of Punjab and Gujarat. In Punjab it is estimated that one in five girl children is missing due to selective abortions".<sup>47</sup>

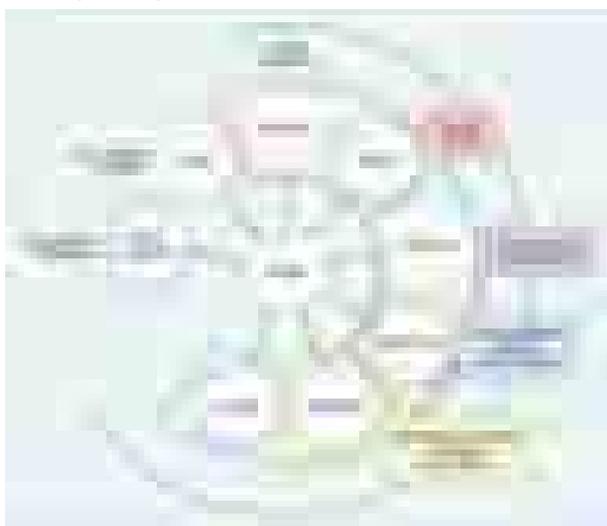
Like female foeticide, infanticide is a crime, "yet it continues unabated as the example below illustrates. In response to the Tamil Nadu Chief Minister's appeal asking parents to leave girl babies in orphanages instead of killing them, the 2001 records of one orphanage show that only seven girl babies were left at the orphanage while over 700 other girl babies born in the surrounding villages just 'disappeared' shortly after birth".<sup>48</sup>

Gender discrimination at each stage of the female life cycle contributes to this imbalance. Sex selective abortions, neglect of girl children, reproductive mortality and poor access to health care for girls and women, have all been cited as reasons for this difference (See figure below).

Gender based expectations have a tremendous impact on the lives of girls and boys. Boys and young men learn that they should be considered 'masculine' by being strong and dominating, sexually active, unemotional, and authoritative (especially with women and girls/boys). Girls and young women learn that females are regarded as emotional and only considered adults if married. They are expected to be subservient to men/boys in decision making. Children, especially girls, are expected to be obedient and subservient to adults (men).

The changing role of women has led to an increased workload for them, since many women work both inside the household and outside in paid employment (double burden). While the role of men has not changed tremendously, more and more men are spending increasingly more time with their children and are becoming involved in household work.

Life cycle of gender discrimination and health



The objective in working with gender based discrimination is to attain gender equality, where the condition or situation is created in which there is no discrimination on the basis of sex. It means that males and females have equal rights, obligations, and opportunities in

<sup>47</sup> Oxfam International, August 2004, Oxfam Briefing Paper 66, *Towards Ending Violence Against Women in South Asia*, pp.7

<sup>48</sup> Ibid. pp. 8

life, with both sexes having the same opportunities to fulfil their potentials. Although it was felt that gender gap has been reduced in some areas, for example, in relation to health and education; with regards to decision making there has been little global change - less than 10 per cent of the world's decision makers are women.

### *Discrimination on grounds of age*

One of the most common ways that make children feel discriminated is regarding their age. An adult is 'supposed' to know more than a child. The beliefs are various, one is of experience and the other is economic. Adults have economic power over the child, which makes the child dependent on the adults for things such as housing, food, schooling and/or other things. Hence, the child has to listen to the adults.

"We children are not listened to, I feel sad."

- An adolescent boy in Herat (Afghanistan) <sup>49</sup>

"Thinking about your life doesn't depend on your age, it depends on your mind."

- An adolescent girl in Herat (Afghanistan) <sup>50</sup>

### *Discrimination within Groups*

It is commonly believed that discrimination happens only within different categories of people. But it can occur within same groups/categories. In this case, children also discriminate against other children and it can also be within a particular age group. For example, older children can discriminate against younger children.

"When I am talking and someone is telling me I am too small and should shut up, it makes me sad."

- An adolescent girl in Jalalabad (Afghanistan) <sup>51</sup>

"When elder boys and girls sit together and talk, I go and sit there. They tell me I cannot sit because I am younger-- so I am scared to sit there."

- A young boy in Dhaka (Bangladesh) <sup>52</sup>

### *Discrimination based on caste*

Caste based discrimination is another very sensitive and controversial area, which has been in existent for so long that it has become a way of life. It is an issue that cuts across all the countries in the region. The caste system has prevailed for over 5000 years. Originally, it was linked to the economical occupation of the family. Everyone belonged to a particular caste by birth and you could not move up or out of it.

In some countries in South Asia, in villages and towns, different groups of castes can be physically segregated. Hence, the upper castes might be living in the central area with easy access to facilities and the lower castes will be in the peripheral without or less access to basic facilities. The lower caste cannot drink from the same wells or even temples. Caste discrimination can have a deeply negative impact

<sup>49</sup> Save the Children, 2004, Seven Windows of India, Documentary (taken from transcript)

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

<sup>52</sup> Ibid.

<sup>53</sup> Ibid

on children's psychology which in turn can affect their development and life choices.

"Three thousand people live in our village. Of them, 2000 belong to backward castes. The upper castes consider the lower caste people as wicked. The lower caste people are unable to marry into other castes. They cannot even have tea or get their hair cut at the same time as other caste people. Right from the ancient days, lower caste people have not been allowed to enter temples. Caste and religious discriminations exist. I pray to God that people should live in unity without such discriminations."

- A child in Tamil Nadu (India) <sup>53</sup>

The 'belonging' to a particular caste or outcaste defines what one can do and not do (see quotes above and below). Similar to gender discrimination, the correlation between discriminations is reflected in the name of the caste and leads to other discriminations. Most of these discriminations are cruel beyond imagination and once again, violates the basics of human rights.

"I have been in love with a low caste girl for the past 14 months. We love each other very much and want to live our lives together. But society does not permit us to get married, as we are of different castes."

- A boy in Nepal <sup>54</sup>

"When I go to school, they taunt me saying that I belong to a lower caste. They look at us differently when we walk through the street in chappals. Earlier, we used to go to school through the Ur area where the upper caste people live. They used to scold us using filthy language, making us unable to walk that way again."

- A girl in Tamil Nadu (India) <sup>55</sup>

Discrimination in the name of caste also brings special considerations which can hurt the 'dignity' of the individual. Discrimination is an issue that has an impact in the attitude, action and participation in certain events/situations. Caste is a very sensitive issue and there is difficulty in breaking the barriers. Since it cuts across all strata, religions, regions, cities and villages and has been in existence over thousands of years, enforced and encouraged by usage of 'religious' texts and superstition, it has been accepted as a way of life and has become mixed with 'culture'.

"I too have suffered from discrimination. I am 17-years-old. We are poor. We work for the rich Naidus (an upper caste) in their fields, sowing the saplings, taking out weeds and harvesting. They poured porridge in our hands and we would take that. We also used to work in fields owned by Brahmins (an upper caste). We called the Brahmins during the time of harvest. They would not touch or speak to us. At school, children of other castes would speak ill of us. If we went outside to work, they asked us what caste we were. When we said that we are Pariahs (a lower caste) and asked for water, they asked us to drink water kept in a jar separately and refuse to give it with their own hands."

- A girl in Tamil Nadu (India) <sup>56</sup>

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<sup>54</sup> Ibid.

<sup>55</sup> Save the Children, 2005, To Stop all Forms of Discrimination:Voices of girls and boys on discrimination

<sup>56</sup> Save the Children, 2004, Seven Windows of India, Documentary (taken from transcript).

<sup>57</sup> Ibid.

It is very difficult to change people's attitude and convince them that all humans are equal. For one who has been brought up in a value system of pure and impure from birth, it is difficult to change, even if there are legislations against caste discrimination like in Nepal and India.

"When we go by bus, we have to give up our place for upper caste people. If we ask for water in the upper caste people's house, they will pour the water on our hands."

- A boy in Tamil Nadu (India),

"We are not allowed to take water from the public well. Only non-Dalits are allowed to take water. If a Dalit stands at a bus stop, the non-Dalits will ask him/her to stand away from them. In the tea shop, there are separate glasses for us to drink tea."

-- A child in Tamil Nadu (India) <sup>57</sup>

"There is a place where the village leaders will sit and give local judgment. If a Dalit sits under that tree, he is punished."

-- A child in Tamil Nadu (India) <sup>58</sup>

### *Discrimination based on religion*

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

- Article 14.1, UNCRC

Religion can discriminate between people or be used by the powerful as a tool which can divide, rule and suppress, even go to the extent of elimination of certain groups. There are Christians, Sikhs, Muslims, Jews, Hindus and Buddhists among others. The ideas that are conveyed in the name of religion can often breed prejudices, not necessarily due to what the texts say, but due to (mis)interpretations. <sup>59</sup>

"In our village, during festivals, we poor are not allowed to enter the temple. But those who have money will go in. Likewise, the rich people will come and take water directly without queuing. <sup>60</sup>

- A girl in Tamil Nadu (India)

Religion has a double discriminatory effect on girls due to their inferior status usually justified under culture and religion. For example, various Islamist groups in Pakistan have been up in arms against the abolition of the draconian Islamic penal law, Hudood, which among other discriminatory clauses, requires that a woman must produce four Muslim male witnesses to prove rape, failing which she faces the charge of adultery (an act that is defined as a crime against the State and is punishable with death by stoning). A government commission recommended its repeal on the grounds that it has sparked an increase in crimes against women, particularly in the incidence of rape. <sup>61</sup>

### *Discrimination based on disability*

State Parties recognise that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community. . . . recognise the right . . . to special care and shall encourage and ensure the extension. . . of assistance. . . and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the

<sup>58</sup> Ibid.

<sup>59</sup> Maybe due to its sensitivity, but after examining the Concluding Observations of the Committee, no reference or concluding observations were given regarding the freedom to practice one's religion or on religious discrimination.

<sup>60</sup> Save the Children, 2004, Seven Windows of India, Documentary (taken from transcript).

<sup>61</sup> Oxfam International, August 2004, Oxfam Briefing Paper 66, *Towards Ending Violence against Women in South Asia*

child... assistance extended ... shall be provided free of charge, whenever possible... and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

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

- Article 23, UNCRC

There is little systematic knowledge about prevailing attitudes towards boys and girls with different kinds of disabilities. One reason is that disability is an issue that is 'invisible' or not talked about much. Families tend to keep disabled children inside the home. Certain disabilities are related to shame and believed to be punishments for sins committed in past actions or lives. Therefore, many children with disabilities very often are not allowed to go out of the house or the community, making them invisible to the outside world. Disability is an issue that still requires lot of sensitisation and awareness.

"My family doesn't listen to me because I am disabled. Due to this I almost refuse to eat the food they give me. The children of my age won't let me join their games too."

- A disabled child in Mazar (Afghanistan) <sup>62</sup>

The lack of available opportunities for children with psychological and even physical disabilities is still striking. Disabled children have very limited access to resources; and health and education are not available to many of them. When available, lack of awareness on how to access it and insensitivity in other children, community or even in teachers has an impact on disabled children's lives.

"I wish the girls would not tell me that I am disabled and that they don't want to marry me."

- An adolescent boy in Heart (Afghanistan) <sup>63</sup>

"When I come out of my house, the people point at me and say, 'why don't you stay in, look at you! You cannot walk properly!' But my problem is not my disability. It is the attitude of people who make fun of me."

- A boy in Lahore (Pakistan) <sup>64</sup>

The last statement highlights the core of the problem. Though disability is an issue, the bigger issue here is the attitude or perception people have towards disabled children.

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<sup>62</sup> Save the Children, 2004, Seven Windows of India, Documentary (taken from transcript)

<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

"Disabled children should be supported by the community and the government and they should be respected."

- A girl in Badakshan (Afghanistan) <sup>65</sup>

"It is as if I don't exist."

- A girl in Pakistan <sup>66</sup>

Where the family, school or community is interested in providing disabled children with education, health and other needs, they may be lacking resources, infrastructure and existence of technical expertise. Teachers are not trained in inclusive teaching, and the education policy and curriculum might be inflexible. Generally, there is a shortage of assistive devices in homes, schools and communities. There is a general lack of awareness and understanding on disability compounded by insufficient implementation of laws pertaining to disability. Poverty, absence of adequate health care and rehabilitation, all these factors further reinforce the isolation of children with disabilities.

Disabled children often face the full force of the problem of poverty and lack of rights. The link between disability, poverty and social exclusion is direct and strong throughout the world. Disability in itself, as well as resultant limited access to education, basic services and socio-economic participation, all mean that disabled children are more likely to experience poverty.

Till date, as with many children's issues, disability has been seen through the lens of a 'welfare approach' rather than a 'rights based approach'. A shift needs to be achieved from a charitable focus to respect for their dignity and justice in terms of equal rights. A disabled person wants to enjoy civil, political and economic rights on an equal basis, not just a few selected rights. Including disabled children in all our work can contribute to inspiring child rights programming.

Disabled children face a double burden of discrimination. They are excluded and marginalised as a result of their impairment, and are further denied a right to participation in decisions affecting them because of their age.

Article 12 of the UN Convention on the Rights of the Child introduces for the first time in international law, the right of all children capable of expressing their own views to express them freely.

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

- Article 12, UNCRC

<sup>67</sup> Pais MS, (1997), The Convention on the Rights of the Child, in Manual of Human Rights Reporting, OHCHR, Geneva.

<sup>68</sup> Lansdown G, (2001) *It's Our World Too!* A report on the Lives of Disabled Children for the UN General Assembly Special Session on Children, Disability Awareness in Action, London.

<sup>69</sup> Between 2000-2003, Rights for Disabled Children, an international working group of disabled people's organisations, undertook analysis of each government report due to be examined by the Committee on the Rights of the Child. It was found that although governments did seek to address the issue of children's participation, albeit inconsistently, they rarely, if ever, mentioned participation with regard to disabled children.

The CRC Committee states that this article is one of the fundamental values of the Convention.<sup>67</sup> It imposes clear obligations on governments to ensure that children and young people have the right to have a say in all actions and decisions affecting them, from the family to the wider community level, and to have appropriate information with which to inform those views. This right to be listened to and taken seriously recognises that children and young people must be involved in the exercise of their rights and not simply be treated as passive recipients of adult protection. However, to date, too little action has been taken by governments around the world to ensure that the right to be heard extends to disabled children.<sup>68</sup>

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

- Article 23.1, UNCRC

Article 23 of the UNCRC also includes disability as a ground for protection against discrimination and for addressing the rights of disabled children. Nevertheless, it is extremely rare for governments when reporting to the Committee on the Rights of the Child, to provide information on the realisation of the rights of disabled children beyond provision of health care and access to education.<sup>69</sup> In other words, although all the Convention rights, in principle, extend to the rights of all children, disabled children are frequently forgotten or ignored, in the same way that the rights of disabled people are disregarded by governments when reporting on international covenants.

The Committee has continuously reflected its concern regarding disabled children's inaccessibility to and/or unavailability of free, high quality primary health care,<sup>70</sup> but also access to public places and providing support to professionals and families. Throughout examining the report, the Committee stresses the need to:

Take effective measures to collect adequate and disaggregated statistical data on children with disabilities and use such data in developing policies and programmes to prevent disabilities and to assist disabled children...develop early detection programmes to prevent and remedy disabilities...establish special education programmes for disabled children and include them in the regular school system to the extent possible...

- Para 57, Concluding Observations of the CRC Committee, India, 2004

Assess the situation of these children in terms of their access to suitable health care, education services and employment opportunities, and allocate adequate resources to strengthen services for children with disabilities, support their families and train professionals in the field... further encourage the integration of children with disabilities into the regular educational system and their inclusion into society, inter alia by giving more attention to special training for teachers and making the physical environment, including schools, sports and leisure facilities.

- Para 59, Concluding Observations of the CRC Committee, Nepal, June 2005

<sup>70</sup> CRC Committee, Concluding Observations, India 2004.

<sup>71</sup> Brolin, L.A., 2000, *How can Boys and Girls with Disabilities Best be Reached?* Save the Children Sweden HQ

Children with physical disabilities can be perceived and treated differently from children with mental or psychological illnesses. In war-ravaged areas, physically impaired children are often accepted, and some times even considered 'heroes'. Such attitudes are common in Afghanistan and in refugee camps of Pakistan.

On the other hand, mental illness can often be attributed to previous sins committed by family members. As these children are looked upon with uncertainty and anxiety they are often hidden away, which makes them further vulnerable.

As for girls with disabilities, the most common attitude is that they are a lifelong burden to their parents since they cannot be married off.<sup>71</sup> Therefore, they are often neglected and become vulnerable and susceptible to abuse, exploitation and maltreatment.

The majority of children exhibiting special needs are not provided suitable educational and psychological services. This lack is clearly seen in the provision of services to children exhibiting learning disabilities. While countries typically offer some special services to children with mental retardation or visual or auditory impairments, few, if any, special services are available to those with learning disabilities.

Learning disabilities constitute the largest number among children with disabilities. Despite an estimated 150 million children with learning disabilities, few professionals outside of Western Europe and North America are properly prepared to work with them, and methods to identify and intervene are lacking.

Learning disabilities are life-long and thus negatively impact academic, social and emotional development, limit vocational development and thus a country's prosperity, and a person's civic involvement. Those with learning disabilities, if identified early and receive suitable interventions, can achieve normally and fulfil important adult responsibilities. It enables them to acquire most if not all of their education in regular settings as well as to develop important self-help, social, emotional and economic skills necessary for a full and rewarding life. They will be able to vote, assume positions of leadership in their communities, and in other ways fully participate in the life of their communities. In addition, they will be able to advocate for others with learning disabilities and other handicaps.

Improved professional preparation of teachers for the learning disabled, identification of learning disabilities, and intervention methods for them requires a solid scientific foundation. The ability of countries to acquire this needed foundation varies greatly. Assistance is needed most in Central and South America, Africa, the Indian subcontinent, and some Asian countries.

In the light of the Standard Rules on the Equalisation of Opportunities for Persons with Disabilities (General Assembly resolution 48/96), the Committee recommends that the State party develop early identification programmes to prevent disabilities, implement alternative measures to the institutionalisation of children with disabilities, envisage

awareness-raising campaigns to reduce their discrimination, establish special education programmes and centres, and encourage their inclusion in society. The Committee also recommends to the State party to undertake research on the causes of disabilities. The Committee further recommends to the State party to seek technical cooperation for the training of professional staff working with and for children with disabilities.

- Para 40, Concluding Observations of CRC Committee, Maldives, 2001

In conclusion, with regard to inclusion of disabled children in mainstream schools, it needs to be considered from the principles of the 'best interests of the child'. While undertaking targeted interventions or mainstreaming disabled children into inclusive schools, consideration should be given to whether these are the best solutions.

### *Juvenile Justice*

Though the UNCRC defines everyone up to 18 as a 'child', many States have fixed criminal responsibility of the child far too low. For example, the criminal responsibility of a child in Pakistan is at 7 years of age. Many children who are incarcerated are street children or child prostitutes (who are already a vulnerable group with little negotiating power and suffering discrimination).

Children who have been to jail or detention centres are stigmatised and discriminated in all spheres of society. They are not trusted and looked upon with contempt. Their access and availability to resources is limited.

"There should be no discrimination when we come out of prison, but when we go back to the free world we know we will be judged on the basis of the crimes we have committed and time spent in the prison; we will be free, but in the prison of isolation again."

- Group of juvenile offenders at Haripur Jail (Pakistan) <sup>72</sup>

"When I came out of jail, initially I felt no problems. But gradually I realised that parents would not let their children come near me. My friends from pre-jail days did not want to have anything to do with me."

- Former juvenile prisoner, Pakistan <sup>73</sup>

The Committee recommends the State party to review the current practice of children living with their parents in prison, with the view to limit the stay to instances in which it is in her/his best interest, and to ensure that the living conditions are suitable for their needs for the harmonious development of her/his personality. The Committee also recommends that children of parents in prison should be provided with adequate alternative care, for instance, within the extended family, and be granted with regular contact with their parents.

- Para 52, Concluding Observations of CRC Committee, Nepal, 2005

### *Socio-economic Status*

The economic status of a child's family plays a role in discrimination. Discrimination can occur when children from different socio-economic status meet. It can also be brought about by particular places where children live and socialise.

<sup>72</sup> Save the Children, 2004, Seven Windows of India, Documentary (taken from transcript)

<sup>73</sup> Age and sex of child not provided, quoted in: Save the Children Sweden, 2006, Towards Juvenile Justice: Learning from Pakistan, Save the Children Sweden: Pakistan, pp. 4.

<sup>74</sup> Save the Children, 2004, Seven Windows of India, Documentary (taken from transcript)

"The Ur people (outcastes) will talk to the Cheri (higher caste) people. But, if somebody dies in the Cheri, the Ur people will not go to visit them. But, if death happens in the Ur, the Cheri people will go there. The Ur people don't allow the Cheri people inside their houses. But, during election time, they go to each and every house in the Cheri and collect votes."

- A child in Tamil Nadu (India) <sup>74</sup>

Both, precarious economical situation and geographical location can have an affect on accessing other rights to facilities or have an impact on the whole life cycle, for example in lack of access to education, transport and health facilities.

### *Discrimination due to HIV and AIDS*

From the moment scientists identified HIV and AIDS, social responses of fear, denial, stigma and discrimination have accompanied the epidemic and those affected by it. Discrimination has spread rapidly, fuelling anxiety and prejudice against the groups most affected, as well as those living with HIV or AIDS. People affected or on suspicion of being affected by HIV and AIDS have been stigmatised, repressed and discriminated against as individuals and rejected by their families, their loved ones and their communities. This rejection holds true in the rich countries of the north as it does in the poorer countries of the south.

In many societies people living with HIV and AIDS are often seen as shameful and bringing shame upon their family or community. It can be associated with minority groups or behaviours, for example, homosexuality. In some cases HIV and AIDS may be linked to 'perversion' and those infected threatened with punishment. HIV and AIDS can also be seen as the result of personal irresponsibility. Factors which contribute to HIV and AIDS related discrimination are:

- HIV and AIDS is a life-threatening disease.
- People are scared of contracting HIV.
- The disease's association with behaviours (such as sex between men and injecting drug-use) or groups that are already discriminated in many societies.
- People living with HIV and AIDS are often thought of as being responsible for becoming infected.
- Religious or moral beliefs that lead some people to believe that having HIV and AIDS is the result of moral fault (such as promiscuity or 'deviant sex') that deserves to be punished.

"My foster son, Michael, aged 8, was born HIV-positive and diagnosed with AIDS at the age of 8 months. I took him into our family home. . . . At first, relations with the local school were wonderful and Michael thrived there. Only the head teacher and Michael's personal class assistant knew of his illness. Then someone broke the confidentiality and told a parent that Michael had AIDS. That parent, of course, told all the others. This caused such panic and hostility that we were forced to move out of the area. The risk is to Michael and us, his family. Mob rule is dangerous. Ignorance about HIV means that people are frightened. And frightened people do not behave rationally. We could well be driven out of our home yet again."

- Foster parent speaking to the National AIDS Trust, UK, 2002 <sup>75</sup>

<sup>75</sup> Avert, HIV & AIDS: Stigma and Discrimination, <http://www.avert.org/aidsstigma.htm> (downloaded 19 September 2005)

This also holds true for other epidemics, such as TB, where the real or supposed contagiousness of the disease results in isolation and exclusion of infected people. Some of the powerful images used to reinforce and legitimise discrimination are:

- HIV and AIDS as punishment (e.g. for immoral behaviour)
- HIV and AIDS as a crime (e.g. in relation to innocent and guilty victims)
- HIV and AIDS as war (e.g. in relation to a virus which needs to be fought)
- HIV and AIDS as horror (e.g. in which infected people are demonised and feared)
- HIV and AIDS as otherness (in which the disease is an affliction of those set apart)

### *Forms of HIV and AIDS related stigma and discrimination*

In some societies, laws, rules and policies can increase the stigmatisation of people living with HIV and AIDS. Such legislation may include compulsory screening and testing, as well as limitations on international travel and migration. In most cases, discriminatory practices such as the compulsory screening of 'risk groups', furthers the stigmatisation of such groups.

Perhaps as a response, numerous countries have now enacted legislation to protect the rights and freedom of people living with HIV and AIDS and to safeguard them from discrimination. Much of this legislation has sought to ensure their right to employment, education, privacy and confidentiality, as well as the right to access information, treatment and support.

Stigma and discrimination can arise from community-level responses to HIV and AIDS. The harassing of individuals suspected of being infected or of belonging to a particular group has been widely reported. It is often motivated by the need to blame and punish and in extreme circumstances can extend to acts of violence and murder. Attacks on men who are assumed gay have increased in many parts of the world, and HIV and AIDS related murders have been reported in countries as diverse as Brazil, Colombia, Ethiopia, India, South Africa and Thailand. In December 1998, Gugu Dhlamini was stoned and beaten to death by neighbours in her township near Durban, South Africa, after speaking out openly on World AIDS Day about her HIV status.<sup>76</sup>

In South and South-East Asia, it is estimated that there are 6,500,000 children and adults living with HIV at the end of 2003. The epidemic's greatest impact is on women and girls as the burden of 'caring' falls on them. Girls drop out of school to care for sick parents or younger siblings. They may have to take on the role of producing an income, food or crops or take on parental roles of siblings if parents die. They are often isolated socially because of AIDS related stigma and discrimination.

Stigma also means that family support is not a certainty when women become HIV-positive. They may be rejected and their property seized when their husbands die. By the end of 2003, the epidemic had left behind

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<sup>76</sup> Ibid.

15 million AIDS orphans. These orphans are vulnerable to poverty and exploitation, and themselves become infected with HIV.

"Sometimes I miss school because Mum's ill. In the morning I'm late like most mornings, because I have to make sure Mum takes her medication. Obviously, if she doesn't take it we know what will happen. So I like to make sure that she takes her medication."

- An affected child <sup>77</sup>

The most recent outbreaks in the region are to be found in Central Asia, where reported HIV infections have grown dramatically from 88 in 1995 to 5,458 in 2002.<sup>78</sup> This is mainly in young people who predominate in this region. In Ukraine, 25 per cent of those diagnosed with HIV are younger than 20, while in Kazakhstan and Kyrgyzstan upwards of 70 per cent of HIV-positive persons are under 30 years of age.<sup>79</sup> Condom use is generally low among young people, including those at highest risk of HIV transmission in Eastern Europe and Central Asia. According to one survey in the Russian Federation, fewer than half of teenagers aged 16-20 used condoms when having sex with casual partners.

*The Committee recommends the need to:*

... establish a system of formal and informal education on HIV and AIDS and STDs, and ensures access to reproductive health counselling and services for all adolescents. ... to promote and protect the rights of children infected with and affected by HIV and AIDS.

- Para 41, Concluding Observations of the CRC Committee, Sri Lanka, 2003

### *Discrimination on sexual orientation*

Research suggests that discrimination against people/children with different sexual orientations could occur because of:

- negative views of sexual behaviour and relationships, which are not procreative nor take place within marriage.
- people with generally lower educational<sup>80</sup> and social status, for example the lower a person's level of educational attainment and social class, the more negative their attitudes are towards homosexuality.
- having and/or adhering to strong religious beliefs which disapprove of sex and/or homosexuality.
- having little/no social contact with lesbian and gay people.

Boys and girls who do not act in line with their gender roles (such as boys being sporty and independent; girls being emotional and caring) may be subjected to severe bullying. This may include accusations of being of the opposite sex or of being gay.

Boys may be more prejudiced than girls towards gay people. This is because the boundaries on boys' gender roles are much more rigid than they are for girls. As a result boys have a limited number of ways acceptable to their peer group to express their emotions. Between girls, in contrast, close friendships which involve embracing, touching and sharing thoughts and feelings are more legitimate and are less likely to be seen by their peers as an indication of homosexuality.

<sup>77</sup> UNAIDS at country level: Progress report, 2004

<sup>78</sup> Avert, HIV & AIDS in Russia, Eastern Europe and Central Asia, <http://www.avert.org/ecstatee.htm> (downloaded 19 September 2005)

<sup>79</sup> Ibid.

<sup>80</sup> The word 'generally' is used here because there are also instances where well educated people are also found to be homophobic.

Gay and other less flattering words are often used by young people as standard insults. This can have a number of effects.

- It silences young people who are experiencing homosexual feelings.
- In order to protect themselves, young homosexual people often pretend to be heterosexual and sometimes join in homophobic taunts themselves.
- The atmosphere at school reinforces the isolation of young people who are being bullied or abused because they are perceived to be homosexual - there is lack of support system and people (students/teachers/parents) are very hesitant to defend them.
- Homosexual young people separate themselves from each other because of the implications of being seen together by their peers.
- Starts a common set of feelings regarding rejection which affects individuals for many years to come often in their adult lives.

But societal discomfort with the existence of homosexual youth in no way excuses the failure of the State to protect these children from discrimination, harassment and violence both in the public and private spheres. Society's deeply held prejudices against marginalised groups can never justify violations of the principle of non-discrimination.

The 'silence' of government and communities to support lesbian, gay, bisexual and transgender youth can have a devastating impact on their lives. These children experience pain and rejection, isolation and the almost total failure of the State to take seriously the human rights of these children. For some, the burden of coping each day with the endless harassment is too much. Many children drop out of school, some commit suicide; and others just barely survive as they navigate the open hostility of families, communities and governments.

The entrenched societal prejudice against lesbian, gay, bisexual and transgender children is based on rigidly enforced rules dictating how girls and boys should look, walk, talk, dress, act, think and feel. Children who break these rules are punished by peers and society through harassment, ostracism and violence. Officials condone this cruel dynamics through inaction or in some cases because they too judge these youth to be undeserving of respect.

Discrimination based on sexual orientation also reinforces the discrimination based on gender that many girls face, and places lesbians in a particularly vulnerable position. The discriminatory view that boys are inherently superior to girls pervades many schools, sending boys a message that they should assert their masculinity and prove their heterosexuality by being abusive and disrespectful to girls as well as to gay children. Unfortunately, sexism also thrives in gay communities. Young lesbians not only face harassment and abuse from their heterosexual peers but may also face discrimination from their gay male peers. While gay boys receive some positive messages because they are boys, young lesbians receive the message that they are unworthy both because of their gender and because of their sexual orientation. Transgender students are the most vulnerable because they receive both intensely negative messages and almost no peer support or understanding.

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<sup>81</sup> Save the Children, 2004, Seven Windows of India, Documentary (taken from transcript)

### *Indigenous Children, Ethnic Minorities and Language*

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

- Article 30, UNCRC

Children from ethnic minorities, indigenous or migrant groups face discrimination which is especially pervasive, since it is based not only upon their age, but also upon other grounds such as skin colour, language, religion or cultural traditions. This has a profound impact on children's self-esteem and self-confidence and the internalisation of negative attitudes which lead to the transmission and reinforcement of these attitudes over generations.

In countries where many ethnic and indigenous groups exist, numerous languages are spoken. Language can be another issue on which children can be discriminated against.

*"We are scolded when we use our own language."*

- A girl at a Government Primary School, Andhra Pradesh, (India) <sup>81</sup>

Due to language, some children may decide to stop (or prevent children from) going to school because they cannot speak to their friends in their native language or because they cannot understand the medium used in schools. Once again, we see that language prevents the child from staying in school, reducing his/her chances of participating and having access to other rights.

*"I stopped going to the government school because when I spoke to my friends in Urdu they punished me."*

- An Urdu speaking child in Mohita, NGO NFE programme, Andhra Pradesh (India),

*"They show TV programmes that nobody can understand,"*

- An adolescent boy in Mazar, Afghanistan

According to UN estimates, there are around 300 million indigenous people in more than 70 countries worldwide. Approximately, half of these live in Asia with an estimated 50 million living in South Asia alone.

Indigenous people often experience discrimination which can lead to various forms of exclusion or marginalisation including:

- Cultural exclusion, whereby indigenous cultures are perceived as inferior and in some cases, may be actively suppressed;
- Economic exclusion, which presents indigenous communities benefiting from and participating in national economic development; and
- Political marginalisation, which hinders indigenous people enjoying full citizenship, participating in decision-making processes and acquiring adequate representation at both national and local levels.

Often these manifestations of exclusion are overlapping and interrelated, and compromise the rights of children in particular. All too frequently, indigenous children live in extreme poverty, have lower school enrolment and higher rate of drop out and repetition; lower level of birth registration; lower vaccination rates; higher mortality rate and poorer access to the judicial system than their non-indigenous peers and are more vulnerable to violence, abuse and exploitation (including trafficking). Often this experience of marginalisation erodes their very identity and with it their sense of self esteem. Indigenous children consistently number among the most marginalised groups in society and are frequently denied the enjoyment of their rights, including the highest attainable standard of health, education, protection and participation in decision-making processes that are relevant to their lives.

*"I had never before heard the two words together: 'indigenous' and 'pride'. Now I know that I want to be a proud indigenous boy."*

- A 16-year-old boy in Quechua Indian, (Peru)

Often these people experience discrimination, oppression, exploitation and even genocide. Promoting indigenous people's rights includes guaranteeing their fundamental freedom as recognised by international standards, respecting indigenous cultures and offering indigenous people the right means to discover a new equilibrium between their own culture on the one hand, and the national and global cultures on the other.

There have been instances where indigenous groups have become part of the development process through their own efforts or with the support of others. Some have harnessed their 'indigeness' to promote their cause and garner resources for their community's development, while many other indigenous groups have been totally isolated, exploited and excluded.

### *Discrimination of Internally Displaced Persons' Children (IDPs)*

IDPs are among the most vulnerable victims of conflict and constitute arguably the largest at risk population in the world. The act of displacement itself is accompanied most often by violence and the most serious human rights violations such as arbitrary killings, torture, kidnapping and rape. The proportion of displacement is usually higher for indigenous or minority groups.

1. These Principles shall be applied without discrimination of any kind, such as race, colour, sex, language, religion or belief, political or other opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria.

2. Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.

- Principle 4, UN Guiding Principles on Internal Displacement.

The UN Guiding Principles specifically recognises that children shall be entitled to protection and assistance required by their conditions and to treatment

which is reflective of their special needs, including free and compulsory education respecting their identity, language and religion.

It is estimated that out of the 25 million displaced, 70-80 per cent constitute women and children, but national and internal IDP policies do not reflect these realities. Displacement frequently results in family breakdowns, disintegration of tradition and social norms, and places children at greater risk of infringements of their physical integrity and psychosocial well being including death, abuse, malnutrition, poverty, discrimination and other human rights abuses.

Conflict-induced displacement often produces more vulnerable groups of children, such as unaccompanied/ separated children, children in detention, street children and child soldiers. For example, displaced boys and girls, particularly those who have been separated from parents and family, are more often targets of abduction, adoption and forcible recruitment by rebel groups and paramilitary or government forces. Many former child soldiers also become displaced due the potential dangers they may face upon return, such as re-recruitment and punishment by family or opposing groups. In addition to military duties, both displaced boys and girls are vulnerable to rape, sexual exploitation and enslavement, but girls are principal targets.

Education can enhance the protection of displaced children by providing them with a routine in their traumatised lives, access to other services and protection from military recruitment. But many internally displaced children are unable to attend school due to cost of education, poor security conditions, lack of infrastructure and services, lack of teaching materials, shortage of teachers, discrimination and language barriers, lack of transportation, and obstruction by authorities. Lack of employment opportunities in urban areas may force many women and girls to join the sex business.

In many countries, where children are still seen as a welfare issue, their roles are reduced to the role of silent victims, as they have little opportunity to interact with authorities, especially since displacement occurs mainly in countries where political rights and civil liberties are denied to the population in general and/or to minority groups in particular.

...develop comprehensive system of psychosocial support and assistance for children affected by the conflict, in particular child combatants, unaccompanied internally displaced persons and refugees, returnees and landmine survivors, which also ensures their privacy... The effective measures to ensure that children affected by conflict can be reintegrated into the education system, including through the provision of non-formal education programmes and by prioritising the rehabilitation of school buildings and facilities and the provision of water, sanitation and electricity in conflict-affected areas;

- Para 45, Concluding Observations of the CRC Committee, Sri Lanka, 2003

### *Discrimination of Refugee Children<sup>82</sup>*

...a child who is seeking refugee status or who is considered a refugee... whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance... to protect and assist such a child

<sup>82</sup> Refugee Children Coordination Unit, *Summary Update of Machel Study Follow-up Activities in 2001-2002*, United Nations High Commissioner for Refugees, December 2003

and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason. . .

- Article 22, UNCRC

In the chaos of conflict, flight and displacement, children face an increased risk of being separated from their families and caregivers. Separation from families is particularly devastating for refugee children. Children, who are unaccompanied or separated from their previous primary caregiver, face a greater risk of sexual exploitation and abuse, military recruitment, child labour, lack of access to education and basic assistance, and detention.

Refugee children and their families may be discriminated and ill treated. Separated girls are particularly vulnerable to, among others forced labour, sexual abuse and human trafficking. Education is an effective tool to protect separated girls and boys from the dangers of military recruitment, exploitation, abuse and violence as well as an important means to give them better opportunities for the future. Rapid identification, registration and documentation, tracing and reunification with their families are also of critical importance to protecting and seeking durable solutions for unaccompanied and separated children.

Furthermore, children and their families may be under threat of deportation and restricted on their freedom of movement. They may also be restricted in their enjoyment to health services.

a) Seek to ensure, as a matter of priority, that all internally displaced, refugee and asylum seeking children and their families have access to health and education services, and that all their rights contained in the Convention are protected, including the right to be registered at birth;

b) Take immediate measures to ensure that all internally displaced, refugee women and children under its jurisdiction are protected from all forms of sexual exploitation and that perpetrators are duly prosecuted;

- Para 81, Concluding Observations of the CRC Committee, Nepal, June 2003

### *Child Abuse and Exploitation*

No country, irrespective of its geographical location, political systems, religious moorings or cultural practices, is immune from trafficking - the contemporary form of slavery. It is often described as a highly complex issue, interwoven with demand and supply, sex tourism, labour migration, forced marriages, bonded labour and other similar practices.

Over the past decade, trafficking in children has reached epidemic proportions. Every year, hundreds of thousands of children are trafficked internally or smuggled across borders and sold as mere commodities. Their survival and development are threatened, and their rights to education, to health, to grow up within a family, to protection from exploitation and abuse, are denied.

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<sup>83</sup> UN Convention against Transnational Organised Crime, 2000, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational organized Crime.

Though gender is the central aspect of trafficking, it is essential to go beyond gender to understand the root causes of trafficking and develop programmes of action accordingly. While the victims of trafficking come from different races and nationalities, indigenous peoples/hill tribes and ethnic minorities have been disproportionate victims of trafficking because of the age-old prejudices and institutionalised discrimination against them based on their origin, conflict in the areas where they live and extreme poverty, gender discrimination, illiteracy, unemployment and most importantly, impunity.

The search for better work has been fuelled by economic disparity, high unemployment and disruption of traditional livelihoods. Gender based discrimination, early marriage and lack of birth registration further fuel the vulnerability of children, especially girls. In Asia, girls from villages in Nepal and Bangladesh - the majority of whom are under 18 - are sold to brothels in India for US \$1000. UNICEF estimates that more than 200,000 children are enslaved by cross-border smuggling in West and Central Africa.

'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

- Article 3(a), Protocol on Trafficking, UN Convention against Transnational Organised Crime <sup>83</sup>

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

- Article 19(1), UNCRC

State Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

- Article 35, UNCRC

State Parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

- Article 32.1 UNCRC

*For the purposes of the present Protocol:*

(a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;

<sup>84</sup> Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 2002

<sup>85</sup> Rana, J. and Jose, J. 2005, Girls' and Boys' Perception of Discrimination and Recommendations to Promote Inclusion and Equity in Nepal, Save the Children (Internal Document)

<sup>86</sup> Asghar, M. S. et al., 2005, Camel Jockeys of Rahimyar Khan: Findings of a participatory research on the life and situation of child camel jockeys, Save the Children Sweden-Pakistan, pp. 30.

(b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration.

- Article 2, UNCRC OP SC <sup>84</sup>

Trafficking in human beings is not confined to the sex industry. Children are trafficked to work in sweatshops as bonded labour, domestic help and for organ transplantation.

"I tried to run away several times from the brothel, but I failed. I even tried to kill myself to be free of such slavery, but I was strictly watched by brothel security guards who put an end to my attempts..... I was very happy when we were rescued from the brothels by the Indian police. I thought prisons might be better than the brothels. The brothel keeper would tell us to hide ourselves in cardboard boxes when the police came to raid the premises. Some of our friends did that."

- An 18-year-old girl in Nepal, belonging to kami caste (blacksmith) <sup>85</sup>

Another important preventive measure against trafficking is spreading public information to mobilise support for effective laws, raise the awareness of key law enforcement and other officials, and to make the socially marginalised groups from whom victims are often recruited more aware of the reality of trafficking. This will make the children less likely to be deceived when approached by traffickers.

"No child goes with his own consent. Those who do it are doing 'Zulm' on us. We will never send our children abroad."

- An ex camel jockey in Pakistan <sup>86</sup>

Most of the children are trafficked or deceived into this trade due to their extreme poverty.

"We send them because we are poor. Instead of watching my child dying of hunger it is better he dies somewhere else where I cannot see him."

- A parent in Pakistan

In recent times, the rising concern about the trafficking of women and children has generated a critique of national and local level political apathy on the issue, and a chronic lack of law enforcement and political will to address this problem. The marginalisation of women's and children's issues limits participation and contributes to further exclusion.<sup>87</sup>

It is also frequently assumed that all trafficked persons desire to return home, whereas they may have initially left home before being trafficked to escape an abusive environment. Stigmatisation by other community or family members might also make return difficult, if not impossible. Adopting a rights-based approach to rescue and reintegration is vital if such efforts are to be positive and effective for the trafficked.

The elimination of trafficking in girls is an important agenda, but it cannot be possible without building a strong social movement on the ground level. The fight against trafficking in women and children is a war against the discrimination,

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<sup>87</sup> Ibid. pp 6.

exploitation, injustice and crime perpetrated by the strong by using the given situation of poverty and starvation for commercial sexual exploitation in the flesh trade.

Looking at the present developments on the crimes against women and children, one should realise that this problem cannot be resolved in isolation. Facts have revealed that this problem has been interlined with growing socio-economic, cultural and political exploitation. If we are determined to fight child sexual abuse and exploitation, we should seriously review and examine the roots and causes of this problem, its impact and results.

### *Multiple Discriminations*

Children can face multiple dimensions of discrimination. For example, girls face discrimination because they are female and because they belong to a minority group and/or are disabled.

### **The Beijing Declaration and Platform for action states:**

'Many women face additional barriers to the enjoyment of their human rights because of such factors as their race, language, ethnicity, culture, religion, disability or socio-economic class or because they are indigenous people, migrants, including women migrant workers, displaced women or refugees. They may also be disadvantaged and marginalised by a general lack of knowledge and recognition of their human rights as well as by the obstacles they meet in gaining access to information and recourse mechanisms in cases of violation of their rights.'

Ethnic discrimination does not always affect boys/men and girls/women in the same way. For example, women and girls members of a particular minority, indigenous or migrant group are targeted for trafficking or sexual slavery; women and girls are also usually targeted for sexual abuse in armed conflict or in detention. Women and girls of particular ethnic groups have been targets of rape and sexual violence and as an instrument of genocide in places like Bosnia and Rwanda.<sup>88</sup>

In South Asia and in many other developing countries especially those with patriarchal societies, there is a very strong bias against girls. Girls are considered a burden both economically and socially. When bringing up girls, there is a common belief that, 'you are watering the flowers of someone else's garden'. It implies the girls will be leaving their parental homes for their husbands' homes after having been fed, clothed and taken care of.

The situation is exacerbated by the high cost of social events like puberty celebration, wedding and dowry. In addition, in Hinduism, girls are barred from performing some religious rituals like lighting the pyre during cremations. In almost all cultures, it is also believed that the family lineage is passed on through sons. The result is that carrying a girl child is considered bad luck. The opposite, having a boy, is a cause for celebration.

*"The day when my mother gave birth to another daughter in spite of already having four daughters was a sad one for me. I mean, we became five girls. On that day, my mother and us, we all became sad."*

- A girl in Afghanistan<sup>89</sup>

<sup>88</sup> Save the Children, 2001, Reporting on Ethnic Discrimination against Children: A reference guide (revised edition), Save the Children, HQ, pp. 17-19

<sup>89</sup> Save the Children, 2004, Seven Windows of India, Documentary (taken from transcript)

Girls self-discriminate themselves too because the notion of girls being inferior or 'bad luck' is deeply rooted in their psyche through what they learn from their surroundings, including parents, teachers, community and media. This idea becomes so entrenched and internalised that the girls and women themselves begin to discriminate their own gender. Due to the constant negative portrayal of girls and women in every sphere of society the negative attitudes perpetuate itself. Girls' and women's inferior status is accepted and reproduced by their own kind.

With modern technology, gender discrimination can start at inception of a child through amniocentesis. As soon as parents find out that the child they are carrying is a girl, the chances of the foetus being aborted are quite high.<sup>90</sup>

(a) Take all necessary steps to ensure the implementation of the Pre conception and Pre natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994;

(b) Further develop massive awareness campaigns involving parents, communities, law enforcement officers, etc., and take the necessary measures, including imposing sanctions to end the practice of selective abortions and female infanticide;

- Para 34, Concluding Observations of the CRC Committee, India, February 2005.

There is a correlation between different types of discriminations leading to inaccessibility or violation of many rights. For example, due to the inferior status of girls in society, her access to education and her health needs are reduced given her 'lesser' value. In contrast, boys would get the first preference in going to schools and for health needs.

"Why don't girls get such good medical treatment as boys? Aren't we human beings?"

- A girl in Lahore (Pakistan)<sup>91</sup>

For most girls, the main aim in life is to be married and be a good wife and daughter-in-law, pushing her needs aside. But even in this, she has no choice in the groom.

"In the village there are many talented girls but they are not allowed to go to school. It makes me sad."

- An adolescent girl in Jalalabad (Afghanistan)<sup>92</sup>

On the other hand, boys can also be subjected to discrimination. As boys, they are expected to play a certain role in the family, having little scope to nurture or fulfil other expectations.

"Because we are boys we are expected to protect our family honour. This involves us in fighting. We don't like it."

- A boy in Peshawar (Pakistan)<sup>93</sup>

<sup>90</sup> A study done in India showed that out of 100 women who came for amniocentesis, 99 female fetuses were aborted.

<sup>91</sup> Save the Children, 2004, Seven Windows of India, Documentary (taken from transcript).

<sup>92</sup> Ibid.

<sup>93</sup> Ibid.



## 7 Breaking the Cycle of Oppression and Exclusion

**B**reaking the cycle of discrimination is a huge, long term challenge. We need to apply multi-pronged approaches to eliminate the cycle of oppression and exclusion. The root causes of discrimination have to be addressed for which we need to practise inclusion, participation and respect for rights as a value. Only then can societies be characterised by greater equality and respect, and less violence.

In addition, it is crucial to identify and address power structures including patriarchal, political, economic, cultural and religious structures. Save the Children programmes often tend to primarily address immediate causes and bypass the root causes. Simultaneously, it is important to focus on the positive aspects of social values and norms and use them to challenge the negative values.

### **Strategy in promoting diversity and equality within programmes**

In order to promote diversity and equality, and integrate it within programmes, one must:

- first identify which groups of children are discriminated against in society,
- who is discriminating against them and
- what the underlying causes are.

Furthermore, it needs to be understood how discrimination and inequalities recur from one generation to another (cycle of discrimination or perpetuation of discrimination). Another critical need is to identify and overcome resistance towards change and utilise the positive aspects of social norms and values to challenge negative ones.

### **The Process of Change**

In order for children to be optimally able to access their rights, it is necessary for certain changes to occur. These include collecting *disaggregated data* at various levels about individuals and finding out how their rights are being addressed or violated. Comprehensive policies and laws are needed for protecting, fulfilling and respecting the rights. There is also a need for an independent judiciary and monitoring mechanism, which effectively monitors rights, violations and omissions, and enforces policies and laws. In addition, adequate allocation of budgets and resources for the poor, marginalised and at-risk children is required. Quality and responsive institutions, services and programmes need to be in existence, along with an economy that enables rights. Participation of right holders in decision-making and in claiming their rights need to be ensured. And finally, all this must be supported by positive attitudes and behaviours towards rights, which will be reflected in practices, norms and values of people, society and institutions.

The essence of the rights-based approach is to ensure that those people's rights are addressed who are most deprived and discriminated against. The duty bearers from different levels are accountable for ensuring that discriminated groups are identified, reached and supported. This essentially requires breaking the power structure of the society and influencing policies for inclusion. The duty bearers are obliged to create enabling structures and mechanisms for this. On the other hand, the right holders including children who are discriminated against, should be empowered and taught to claim their rights.

## Applying a Rights-Based Approach to Programming

*Applying a rights-based approach to programming means<sup>94</sup>:*

- Putting children at the centre, recognising them as **rights holders** and social actors.
- Recognising governments as primary **duty bearers**; accountable to their citizens, including children, and accountable to the international community.
- Recognising parents and families as **primary care-givers**, protectors and guides – and supporting them in these roles.
- Giving priority to children and a **child friendly environment**.
- Being **sensitive** and seeking inclusive solutions which involve a focus on **those boys and girls who are at risk and discriminated against**.
- Addressing **unequal power structures** (For example, class, sex, ethnicity, age, caste, religion).
- Focusing on those who are most at risk and discriminated against.
- Holding a **holistic vision** of the rights of children whilst making strategic choices and taking specific actions.
- Setting **goals** in terms of **fulfilment of rights**.
- Aiming for sustainable results for children by **focusing** not only on the immediate, but also the **root causes of problems**.
- Using **participatory and empowering approaches**, particularly with children.
- Building **partnerships and alliances** for promotion of rights of children.
- Counting on **international co-operation**.
- Taking a holistic perspective, which requires a **multi-sectoral response**.
- Providing a long term goal which is clearly set out in **international legal frameworks** that are shared by governments, donors and civil society.
- Encouraging **legal and other reforms**, such as regular monitoring mechanisms which create a much greater likelihood of sustainable change.

Finally, there is a need to link the approaches and strategies with the principles of the UNCRC in order to address discrimination and ensuring that duty bearers protect, promote and fulfil their obligations to combat and prevent discrimination in a responsible manner.

Although it was felt that gender gap has been reduced in some areas, for example, in relation to health and education; with regards to decision making there has been little global change - less than 10 per cent of the world's decision makers are women.

## Duty Bearers

### *The Role of the State*

Responsibility, duty and accountability might have different meanings but in this context they are used in similar ways. The child has the right to claim his/her right from the duty bearers. On the other hand, duty bearers are responsible for respecting, protecting and fulfilling the rights of children. In other words it is their duty

- to respect rights and to avoid interfering against them,

<sup>94</sup> Save the Children, 2003, Child Rights Programming: How to Apply Rights-Based Approaches in Programming: A Handbook for International Save the Children Alliance Members

- to protect children's rights from being violated by others; and
- to fulfil children's rights (proactively – by providing conducive environments).

Besides, the duty bearers are also obligated to take proactive measures to combat and prevent discrimination by others. Laws and policies can be formulated without delay, but it takes longer to ensure that all children can access these rights, for instance the right to education and health. Even developed countries have a duty to plan and start work on the total elimination of all forms of discrimination.

In addition, the international human rights treaty bodies have also made it explicitly clear that States have the responsibility in ensuring that children's rights are not violated in the private sphere. Of course, this is a challenge, but many children and their rights are repeatedly violated in the home and in the company of other children.

According to the UNCRC, the State is duty bound to ensure that children are protected from all forms of discrimination by working to combat and prevent it. Governments are not only required to ensure that their own actions do not discriminate against any child/group of children, but they are also obliged to take proactive measures to combat and prevent discrimination by others.

### *Monitoring the Implementation of the Convention and Concluding Observations of the CRC Committee*

To monitor the implementation of the Convention, States are required to report to the CRC Committee and follow approved guidelines which contain relevant information about legislation, budgets, national plans and administrative structures to enforce the UNCRC. While the Committee on the Rights of the Child acknowledges that social, cultural and economic rights (such as education, health, play, an adequate standard of living) can often only be realised 'progressively' due to lack of resources, discrimination has to be addressed immediately. Arguments of limited resources cannot be used to defend gender bias or exclusion of certain groups from the mainstream of society.

After the Committee has analysed the State reports, it issues 'Concluding Observations' which are recommendations to the States to improve certain rights of children. They can range from legislation, budgets, national action plans to specific programmes and strategies. The next time the State reports back to the Committee it has to show that it has taken actions to implement the Concluding Observations and provide information accordingly.

### *Positive discrimination fundamental to rights-based approach*

Article 2 of the UNCRC focuses on non-discrimination and emphasises equality, but at the same time, the CRC Committee<sup>95</sup> suggests that proactive measures are sometimes necessary to effectively counter disparities. One proactive measure is preferential treatment, which promotes the welfare of a group of people who were previously discriminated against (provided that the group desires such measures). The measures should be based on specific group needs rather than group membership. The treatment of measures should be on a temporary basis

<sup>95</sup> The CEDAW Committee explicitly provides for affirmative action or positive discrimination stating under Article 4.1: Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination... these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

and should cease once the aim has been reached. The special measures should be time-bound and specific with tangible (equitable) results.

The Committee recommends that all existing and future special temporary programmes be provided with specified goals and timetables, in order to evaluate their success and justify their continuation, expansion and dissemination. The Committee further recommends that the State party start to develop special programmes for the allocation of educational and other benefits that are based on the child's needs and rights rather than on the basis of sex, caste or tribe, or any other characteristic that may result in unjustifiable discrimination.

- Para 32, Concluding Observations of the CRC Committee, India, February 2004

The Committee recommends that the principle of non-discrimination, as provided under Article 2 of the Convention, be fully implemented. A more proactive approach should be taken to eliminate discrimination against the girl child, children with disabilities, children living on remote islands, and children born out of wedlock.

- Para 35, Concluding Observations of the CRC Committee, Maldives, June 1998

Most government reports tend to list legislative frameworks, policies, programmes, strategies and even activities for ensuring children's rights. Unfortunately, there is little analysis of the effects of these measures. Any difficulties and problems encountered are only briefly mentioned, while few reports comment on actions which promote non-discrimination within the State structure. Another area of concern is the lack of adequate disaggregated data in most country reports.

In its 'Concluding Observations' the Committee on the Rights of the Child observed that even though countries may have non-discriminatory legislation, the legislation needs to be enforced; and powerful measures taken to overcome disparities, discriminatory attitudes and other causes of discrimination. The Committee on the Rights of the Child also encourages some States to reach out to political, religious and community leaders in order to eradicate traditional practices that discriminate against children.

The Committee encourages the State party to launch comprehensive public education campaigns to prevent and combat gender discrimination, particularly within the family.

- Para 23, Concluding Observations of the CRC Committee, Tajikistan, October 2000

The Committee recommends that the State party increase its efforts to ensure implementation of existing laws guaranteeing the right to non discrimination, and to adopt appropriate legislation where necessary, to ensure that all children within its jurisdiction enjoy all the rights . . . to prioritise and target social services for children belonging to the most vulnerable groups, and to take all effective measures to ensure their protection from exploitation. The Committee encourages the State party to launch comprehensive public information campaigns to prevent and combat all forms of discrimination.

- Para 36, Concluding Observations of the CRC Committee, Nepal, June 2005

The Committee recommends that the State party amend its legislation and increase its efforts to ensure the implementation of existing laws guaranteeing the principle of non discrimination and full compliance with Article 2 of the Convention, and to adopt a proactive and comprehensive strategy to eliminate discrimination on any grounds and against all vulnerable groups.

- Para 26, Concluding Observations of the CRC Committee, Sri Lanka, July 2003

Even though the government is the overall duty bearer, all actors in society, including international development agencies and UN agencies are responsible for ensuring that children are not discriminated through their general programmes and projects and to implement initiatives specifically designed to promote the rights of all children, especially vulnerable children. In addition, parents and children themselves have a responsibility to combat and prevent discrimination. The duty bearer for the child might shift depending on the context and situation in which the child is living.



The Committee has highlighted that discriminatory attitudes restrict access to resources and services. When examining the Concluding Comments, it reflects the Committee's concerns regarding discriminatory attitudes towards children with disabilities, street children, child victims of sexual abuse and exploitation, indigenous, internally displaced children, tribal children, children from lower castes, slums, HIV and AIDS affected, children with different sexual

orientation and other vulnerable groups, on a daily basis.<sup>96</sup>

The Committee also recommends that the State party undertake an education campaign for boys and men on gender issues and sex discrimination.

- Para 29, Concluding Observations of the CRC Committee, Bangladesh, October 2003

The Committee encourages the State party to continue its efforts to carry out comprehensive public education campaigns to prevent and combat caste-based discrimination with a view to changing social attitudes, by involving, inter alia, religious leaders.

The Committee also encourages the State party to continue its efforts to carry out comprehensive public education campaigns to prevent and combat gender discrimination, particularly within the family. Political, religious and community leaders should be mobilised to support efforts to eradicate harmful traditional practices and attitudes which still discriminate against girls.

- Para 28 and 30, Concluding Observations of the CRC Committee, India, February 2004

The Committee recommends that the State party increase its efforts to ensure implementation of existing laws 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 any grounds and against all vulnerable groups. The Committee urges the State party to pay particular attention to the situation of the girl child, in particular girls living in rural areas, in order to halt the practices of forced marriage and bridal kidnapping, which prevent the girl child from fully enjoying the rights enshrined in the Convention.

- Para 27, Concluding Observations of the CRC Committee, Kyrgyzstan, November 2004

<sup>96</sup> In some countries such as India and Nepal, certain issues such as caste based discrimination are more prominent than in other countries.

Discriminatory attitudes contribute to low school enrolment, high dropout rates, early and forced marriages, and children who are more likely to fall victim to abuse and exploitation. Discriminatory attitudes and behaviours can also be a result of religion-based personal status laws that perpetuate gender inequality in areas such as marriage, divorce, custody and guardianship of infants, and inheritance. In order to improve the enjoyment of rights by vulnerable groups of children, special temporary measures are recommended for improving their situation (provided this is sought by the group) till the groups receive benefits to a similar level as other groups of children.

31. (a) Take effective measures, including enacting or rescinding legislation where necessary, to prevent and eliminate discrimination, ... in all fields of civil, economic, political, social and cultural life;

(b) Establish accessible, prompt and effective mechanisms to monitor, receive and address complaints of discrimination (e.g. prompt appeal in circumstances of denial of school enrolment); and

(c) Take all appropriate measures, such as comprehensive public education campaigns, to prevent and combat negative societal attitudes towards different ethnic groups.

- Para 31, Concluding Observations of the CRC Committee, Bhutan, July 2001

The Committee also recommends implementing and developing legislations, policies and national plan of actions which are non-discriminatory and takes into consideration the rights of ALL children. Where States have legislations prohibiting caste-based and other discriminations, proactive action must be taken to ensure de facto discrimination does not occur (due to cultural, religious or other reasons). This includes awareness raising, capacity building and sanctions.

The Committee recommends that concerted efforts at all levels be taken to address social inequalities by reviewing and reorienting policies, including increasing budgetary allocations for programmes targeting the most vulnerable groups...

The Committee recommends that the State party, in accordance with Article 17 of its Constitution and Article 2 of the Convention, take all necessary steps to abolish the discriminatory practice of “untouchability”, prevent caste- and tribe-motivated abuse, and prosecute State and private actors who are responsible for such practices or abuses. Moreover, in compliance with Article 46 of the Constitution, the State party is encouraged to implement, inter alia, special measures to advance and protect these groups. The Committee recommends the full implementation of the 1989 Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the 1995 Scheduled Castes and Scheduled Tribes Rules (Prevention of Atrocities) and the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993.

- Para 26 and 28, Concluding Observations of the CRC Committee, India, February 2004

The Committee emphasises on the importance of linking with other Conventions and Declarations. It requests most of the countries examined here to provide specific information in its next periodic report on the measures and programmes undertaken by the State party and to follow up in particular on the Declaration and Programme of Action adopted at the

## 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

Human rights standards are defined by the international human rights treaties and are generally considered to be internationally accepted values and norms reflected by international customary law. Hence, if a government has ratified the human rights treaties, they are obligated not only nationally, but also globally to ensure that the rights of children are respected, fulfilled and protected.

### **Strategies for Combating Discrimination**

Save the Children believes in social justice and in challenging all forms of discrimination against children. Based on the principles of the Convention on the Rights of the Child, Save the Children works towards eliminating discrimination. Save the Children believes that achieving sustainable change in children's lives involves structural changes in society as well as cultural conceptions and social values, norms and attitudes. The achievement of full and equal rights for all children will result in changes in social values, public policy and practice. This will include analysis of existing social and cultural values and attitudes – including gender roles and power relations - that are the foundation of discrimination in specific contexts. These analyses are essential for developing holistic policies and programmes which are more relevant to discriminated children. Child impact analysis of legislation and policies looking at different groups of children, are also important tools for preventing and addressing discrimination.

Save the Children believes that discrimination should be addressed through a multi-sectoral and a multi-pronged approach which includes:

- Research and analysis
- Direct support
- Knowledge dissemination and
- Capacity building and awareness raising

Working against discrimination is a huge challenge and partnerships need to be built to join forces to work to ensure that all children have access to holistic development. This means that work needs to be undertaken in strengthening infrastructure and building support among different constituencies such as: governmental institutions; intergovernmental organisations; UN organisations; local and grassroots organisations; networks; universities and research institutions; mass media; international NGO's; religious congregations; judicial and law enforcers and many more.

The focus of any strategy for challenging discrimination must not be on changing children who are discriminated against but rather on changing the legal framework, power structures, the attitudes of those who discriminate, the physical environment and the balance of resources which perpetuates injustice. Tackling them requires a range of long and short-term strategies emanating from governments but which have an impact on all levels of society.

The first step in addressing discrimination is to collect qualitative and quantitative information about discrimination in order to be able to design

appropriate strategies, mechanisms and policies. It is only through listening directly to the experiences of children that adults gain awareness of the extent, nature and impact of discrimination on children's lives. It is also important to collect information from those who discriminate. Without understanding why people act in a specific manner, there is no common ground for discussion and no opportunity to assist people in solving the problems in their lives. Government reports, concluding observations and NGO alternative reports are also important sources of information as well as advocacy tools for NGOs.

NGOs can address discrimination by pressurising government and other actors, directly or through partner organisations, to fulfil their responsibilities. They can also address discrimination through their own projects/ programmes and provide good examples to the governments and other actors on how to address non-discrimination.

*The following are vital actions to be taken for combating discrimination:*

#### **Introducing and Implementing Legislation**

To start with, legislation is a first step in fighting discrimination. It is important to introduce legislation for establishing the general principle of non-discrimination, which states that it is unlawful to discriminate. Legislation by itself is inadequate if it is not implemented and hence should include means of implementation and effective measures for enforcement. It is important to undertake systematic analysis of existing legislation and to identify ways in which these directly or indirectly discriminate against children. Legal reform is necessary to send a formal message that traditions, customs or practices, contrary to the rights of all children will no longer be accepted and can serve as a catalyst in changing attitudes.

#### **Analysing Budgets and Maximising Resources**

The commitment to provide equal rights for all children will often increase the demand for additional resources. Laws without substantial resource backing can be futile, for example, to include disabled children in mainstream schools will require help with transport, adaptation of buildings, teacher training and additional teaching resources.

Governments should consider disaggregating budgets to identify the proportion being spent on particular groups of children in relation to their representation within the population. For example, governments need to ask if spending on boys' and girls' education is equal? And where children have been disadvantaged, consideration should be given to affirmative action schemes to enable the elimination of past inequalities.

#### **Collecting Data**

One primary difficulty faced by governments and NGOs in tackling discrimination is the lack of available data on children who are being discriminated. The CRC Committee routinely pressures the governments to collect better statistical disaggregated data in order to identify the situation of all children, impact of legislations, access to services and wherever appropriate, to develop recommendations accordingly.

### **Promoting training for professionals working with children**

All professionals working with boys and girls need training to help them understand the principle of non-discrimination and the implication of any new legislation related to it. For example, to ensure that children from minority communities are provided with equal rights to health care or education, professionals may need help in understanding their culture and in acquiring additional teaching skills.

### **Raising Public Awareness**

Public awareness through educational campaigns is needed to challenge discrimination and encourage change in traditional attitudes, prejudices and misconceptions about particular groups of children. The important point is to encourage change of attitudes through actions and help people to understand better the extent of corrosive impact of discrimination. Public awareness campaigns should focus on promoting diversity and inclusion.

### **Promoting Human Rights Education**

Education introduces better understanding and respect for others; Article 28 stresses the right to education on the basis of equal opportunities. Article 29 of the Convention promotes the concept of schools which both practices and respects the right of children and also creates opportunities for children to learn and value human rights, tolerance, respect for diversity and differences. But the reality in most schools all over the world is far from this. There is a need to involve children by providing them opportunities to practice democracy and experience themselves as subjects of rights. These participatory and empowering approaches would be the most effective means of undermining and challenging both prejudicial and discriminatory practices.

### **Using the media**

The media can play a role in exposing injustice, human rights violations and discriminatory practices. They can rationally challenge traditional stereotypes and promote positive images of groups of children vulnerable to abuse and neglect.

### **Listening to and involving children**

It is essential to listen to children and their direct experiences of discrimination in order to develop effective strategies. Unless adults listen they will be unaware of the extent and nature of any discrimination children suffer and without that knowledge they will be unable to develop holistic approaches. Too often adults wrongly assume that they understand children's lives. There is a growing movement in involving children as partners in the development of strategies to address violation of their rights.

And while there are no blue prints for model behaviour, there are some important considerations:

- **Be clear about what you are trying to achieve.** What are the boundaries, what can be influenced by the consultation? There is no point in consultations if there is no power or willingness to change.
- **Be prepared to really listen.** Children and young people may express themselves differently from adults but that does not mean that what they are saying is any less meaningful.

- **Be prepared to act on what they say.** It is not always possible to give children what they want, but serious consideration to their views is important if there is to be a genuine commitment to involving them.
- **Remember that children, no more than adults, are not a homogeneous group.** Their views will undoubtedly reflect a wide range of concerns and opinions as those raised by adults but they will provide a different perspective.
- **Consult young people on how best to involve them.**
- **Don't expect children to want to participate in forums designed for adults.** The methods of involving children should vary according to their age and environment they come from.
- **Involve children at the earliest possible stage,** not merely as an add-on at the end of the process.
- **Always provide feedback to the children** on the results of the consultation even if it did not result in children getting what they wanted.
- **Be prepared to make mistakes** and get it wrong, and do it better next time.

It is also important to recognise the extent to which children can be enlisted as advocates on their own behalf. Children can provide solutions ranging from peer counselling to tackling issues of bullying in schools. They can represent each other in challenging school practices which discriminate against certain groups. They can campaign for governments to change unfair laws, provide more resources for disadvantaged groups and promote greater justice for children.

Despite the above suggestions, it should be recognised that at times it is very difficult to involve the most marginalised children, for example, child domestic workers, sexually abused children and children who are being used for carrying arms since they might be invisible or they do not have the freedom to be involved.

Furthermore, there is a tendency for adults to listen to children who are more vocal, expressive (For example, children who are better at music and dance) and who can write. This may mean that children who are younger, quieter and less expressive are given fewer opportunities to express their views.

Adults also need to be careful not to overburden the children. They should rather, focus on where the 'value' is, for both children and adults (or programmes).

### **Action to Combat Discrimination**

In order to combat discrimination, both the immediate and root causes of discrimination must first be identified. (Refer to the table listing the differences on Page 13). When addressing a specific type of discrimination, the list changes to reflect the circumstances.

The duty bearers/ responsible actors who are obligated to combat discrimination include, but are not exhaustive of: family, community, local government, central government, educational institutions, religious leaders, law enforcing agencies, judiciary, media, NGOs and international community.

Suggested action for preventing and combating discrimination by children who are discriminated against	Suggested action against discrimination by children and larger society	Suggested action to be taken by governments against discrimination	Suggested action to be taken by NGOs against discrimination
<ul style="list-style-type: none"> <li>• Self realisation</li> <li>• Self empowerment</li> <li>• Openness</li> <li>• Awareness raising</li> <li>• Forming own organisations (e.g. national organisation of sex workers to protect rights of sex workers and their children)-</li> <li>• Creating advocacy groups-</li> <li>• Participation</li> </ul>	<ul style="list-style-type: none"> <li>• Form pressure groups</li> <li>• Increase size of their organisations</li> <li>• Creating social movement</li> <li>• Law reforms and implementation</li> <li>• Social mobilisation</li> <li>• Campaigns (local or nationwide)</li> <li>• Networking</li> </ul>	<ul style="list-style-type: none"> <li>• Legislation and implementation</li> <li>• Coordinating mechanisms</li> <li>• Allocation of budgetary resources</li> <li>• Monitoring mechanisms</li> <li>• Data collection</li> <li>• Training on UNCRC</li> <li>• Cooperation with NGOs</li> </ul>	<ul style="list-style-type: none"> <li>• Advocacy</li> <li>• Policy reform initiatives</li> <li>• Training and capacity building</li> <li>• Awareness raising (media campaigns, information dissemination)</li> <li>• Networking &amp; coordination</li> <li>• Monitoring</li> <li>• Mobilisation and motivation</li> <li>• Facilitation</li> <li>• Resource support</li> </ul>

A multi-pronged approach is essential for combating and eliminating discrimination against children in vulnerable groups. Some of these strategies can be:

- Using empowering and participatory strategies and approaches for children who are discriminated against,
- Working with and implementing legislation, and
- Educating and raising awareness in society about human rights and the effects of discrimination.

### Action by Children

Children have begun to be a part of the action against discrimination at many levels by building networks at national, regional and international levels and forums. However, much of their focus has been limited such as gender based discrimination, disability, trafficking and child labour.

An example of action taken by children from Bangladesh:

POLICY ADVOCACY	CHILDREN AND MEDIA	CHILDREN IN PARTNERSHIPS
Participation of children in NPA (National Plan of Action), meeting with different institutions such as law enforcement authorities, local government authorities, education officers and employers. Actively participating and sharing experience on discrimination at national and international levels.	Children are using the media to reflect their situation. Sharing experiences with journalists and gaining significant coverage. Children are producing their own media like a children's newspaper, creation of a photographic exhibition, among other things. Children are using Theatre for Development (TfD) processes to create awareness at the community level.	Children are actively working with Save the Children partners to identify, plan and implement projects.



## 8 Recommendations

**D**iscrimination itself is not a new theme. It has been existent over many centuries and generations. Discrimination happens not only to children, but also to adults and is manifested in many ways. It can be practiced through economic or political means. The suppression of a certain group or individual for the advancement by another group is the continual power struggle that has been occurring since centuries.

Children constitute a small proportion in this power struggle. Until and unless the power struggle is challenged and questioned, discrimination will continue to be an issue. To further the right to non-discrimination, organisations such as Save the Children need to network and build alliance with other human rights organisations to challenge this status quo through advocacy, sensitisation and legislation change. Only by working with all groups at all levels of discrimination, can the right to non-discrimination of children be achieved.

Understanding the mechanisms, processes and nature of discrimination, and its impact on girls and boys and their communities will lead to effective application of the principle of non-discrimination. This can also be useful in developing best practices to prevent and address discrimination through empowering approaches and active participation of children. New partnerships then need to be forged with organisations working with gender and ethnic discrimination against children, human rights organisations, the media and people's movements. Partnerships can be built with men and boys to combat gender inequality and inequity per se in society, which can be transmitted through hegemonic forms of masculinities and their interpretations.

The government and others duty bearers are obliged to formulate and implement policies and laws, allocate resources and develop structures and mechanisms to ensure that the groups of children and their communities most marginalised and discriminated against are equally included in the promotion of rights. Accountability should be strengthened through identification of gaps within the legal system, capacity building and advocacy. Civil society needs to be held accountable to promote diversity-friendly and inclusive schools, institutions, communities and families. Capacity of staff and partners to address discrimination needs to be built through CRP training. Tools and mechanisms have to be developed to ensure that Save the Children Sweden and its staff adopt and implement gender and diversity policies and action plans. Inclusive physical structures and diversity-friendly policies and attitudes should also be promoted.

## **General Recommendations**

### *Advocacy and Lobbying*

- Launch awareness raising activities, especially on child rights and non-discrimination, which should include parents, teachers, religious leaders, judiciary, law enforcement officers and others working with children.
- Undertake fact finding research, both qualitative and quantitative, which should be systematically documented and made widely available for adults and children.
- Widely disseminate information and documents at all levels, especially to the judiciary, law enforcement agencies, religious leaders, the

community and parents. Where necessary, all relevant materials should be translated to the local environment.

- Network and build alliance with like-minded organisations working with vulnerable groups to lobby and advocate for change in legislation on non-discrimination, information sharing and to act as pressure groups.
- Lobby and undertake advocacy work on non-discriminatory legislation, its criminalisation and monitoring mechanism.
- Explore and document various advocacy tools to pressurise the government into action.

### *Capacity Building*

- Build capacity of children, parents and community on non-discrimination and UNCRC.
- Train and ensure that all relevant stakeholders have knowledge and capacity to work with non-discriminatory laws and policies.
- Build capacity to promote inclusion and respect for diversity, and establish clear goals and time-scales for moving towards inclusive education for all children.

### *Education*

- Governments should enact and enforce national legislation prohibiting discrimination in education against children because of their race, ethnicity, gender, social or other status. Protection from discrimination should include mechanisms for discriminated children and their guardians to lodge complaints and receive rapid redress; these mechanisms should be publicly communicated.
- Governments should allocate educational resources to ensure that underserved populations including vulnerable children, have equal access to education. This may entail building additional schools in these areas and allocating additional teachers.
- Ministries of Education should develop concrete plans and mechanisms to identify and reach out to populations of children that are underserved by the education system. Such mechanisms could include a special office or unit to focus on effective strategies for ensuring that these groups have equal access to schooling.
- Education should be holistic, taking into consideration the needs of discriminated groups, language of teaching, timing and relevancy of curriculum and school environment.
- Increase children's participation in schools by providing and ensuring adequate educational materials; easy access to educational institutions (geographical location); proper infrastructure and facilities (including separate toilets for boys and girls and accessible to wheelchairs); relevant syllabus and methods of teaching and learning; awareness of education to parents; sensitisation on non-discrimination in schools and respecting cultural and social values (valuing girls, disabled, ethnic, indigenous education); and safety and security in schools (especially in conflict areas).
- Develop child friendly associations and/or spaces; or alternative educational centres, which can provide life related information and facilitate their creativity and enhance knowledge and capacity.
- Review education policies to combat discrimination and violence in schools and effectively develop attitudes of tolerance and understanding of those who are different.

- Include human rights and peace education in school curricula, and make sure the spirit of the rights of the child should influence all aspects of daily life in schools.
- Challenge prejudice and ignorance by promoting public education campaigns to overcome prejudices, misconceptions and lack of understanding of the nature and implications of discrimination and to promote respect for the equal rights of all children.

### *Legislation Reform*

- Governments should enact and enforce legislation and policies prohibiting discrimination in all settings against children because of their race, ethnicity, gender, social or other status, and ensure that resources are allocated such that all children have equal access to all services. Governments must develop concrete plans and mechanisms to identify and include populations of children that are discriminated against accessing social services.
- Protect and promote the rights of children, especially of vulnerable groups (such as indigenous children, HIV and AIDS affected and trafficked) by developing appropriate legal frameworks such as legislation and policies based on children's human rights.
- Implement campaigns of 'zero tolerance' of discrimination and violence against children, and introduce mechanisms through which children can challenge violence and abuse to which they are exposed due to their vulnerable situation.
- States should ensure that the communities to which these children belong receive adequate protection under the law, and make certain that these laws are effectively enforced at the national and local levels.
- Legislation should be enacted to criminalise discrimination, and should be widely disseminated and implemented through capacity building of personnel with emphasis on judiciary, law enforcement and other service providers.
- Ensure and promote participation of discriminated groups (both as individuals and as a group) in decisions which affect families, schools and the community. Participation of discriminated groups should also be ensured in local and national government decisions and in all consultation mechanisms in which discriminated children are fully and effectively represented.

### *Media*

- Raise awareness of discriminated groups through various forms of mass media and utilise current statistical information as well as life stories or qualitative information reflecting children's situation.
- Work with media and encourage them to avoid stereotypes and prejudicial expressions in their programmes.
- Leaders and people who are strong role models including children, should be encouraged to stand up publicly against xenophobia, prejudices and discriminations.
- Expose unintended consequences or lack of appropriate legislations and policies on children.

### *Monitoring*

- Establish a system of self-monitoring which should be inbuilt into the government (at all levels) and complemented by an independent review mechanism, for instance, an ombudsman on the implementation of

legislations on non-discrimination, inclusiveness to basic services and equity of all vulnerable groups.

- Encourage monitoring by NGOs.
- Develop monitoring tools for self and partner organisations, including a code of conduct for NGOs.
- Develop impact indicators reflective of discriminated children's groups such as indigenous children, HIV and AIDS affected, trafficked, and those of vulnerable caste, gender, ethnicity, age, economic background, sexual orientation and so on.
- Conduct monitoring and auditing of expenditure and budget; and policy performance at village level of governments, NGOs, international development agencies and UN agencies.
- Establish Child Rights Commissions and ombudspersons for the implementation of the Convention including the principle of non-discrimination.

#### *Research and Information/Documentation*

- Documentation of information both qualitative (including success stories) and quantitative (disaggregated statistics for all discriminated groups by caste, gender, ethnicity, age, economic background and so on) for effective implementation of problems and advocacy for change.
- Collection of relevant and disaggregated data across different identities and countries, showing trends over time and analysed regularly.
- An information strategy should be developed to foster tolerance and to expose past violations.

### **Thematic Recommendations**

#### *Disability*

- Legal remedies must be made available and accessible to disabled children in order for them not to be discriminated.
- Governments should undertake commitments to ensure that disabled children are aware of their rights and that there are legal remedies available to them when those rights are violated.
- Ensure participation of disability organisations in partner organisations.
- Children with disabilities should be involved and their meaningful participation ensured in all programming that is meant to help achieve their goals and objectives.
- Build capacity that enables children with disabilities to share their views and issues about their rights as individuals.
- Develop strategies in disseminating information to children with disabilities about their rights and the existing conventions, policies and legislation they could use to advocate and attain their rights.
- Strengthen and use children and adults with disabilities as role models and mentors to reach out to children with disabilities and other populations in general.
- Ensure equal rights to education by 'stating' in education policies that **all** children implies children with and without disabilities.
- Provide up-to-date data to ensure that the visibility of children with disabilities is highlighted with regard to, for example, poverty, abuse, education, health and institutional care.
- Expose and challenge neglect and abuse of children with disabilities by undertaking research to highlight abuses and violations of their rights in their daily lives.

- Enable the capacity and knowledge of these children towards contributing to developing policies and legislations which are reflective of their situations and work towards eliminating violations and abuses.
- Remove physical, cultural, social and economic barriers by undertaking analysis in collaboration with children and adults with disabilities and concerned organisations and develop strategies to create an inclusive environment which facilitates respect for all the rights of children with disabilities.

### *Caste and Religion*

- Ensure that the government implements measures such as legislations and policies designed to abolish the practice of ‘untouchability’ and is committed to taking action to prevent further violence and prosecute both State and private actors responsible for caste-motivated attacks.
- Educate State agents and population at large on the rights and constitutional freedom of all citizens, including children from various religious groups.

### *Child Abuse and Exploitation*

- Increase social awareness on trafficking which includes information on dangers of seeking work abroad, STDs and HIV and AIDS.
- Rescue, compensation, rehabilitation and social reintegration to include children’s views in all steps taken on their behalf. This should be in conjunction with employment, life skills, training and education.
- Rehabilitation and reintegration should be holistic, looking at psychosocial interventions, medical rehabilitation, housing and protection from re-victimisation.
- Sensitisation trainings with judicial and law enforcement officers on higher border security; identification and rescue.
- Co-ordination and alliance building work to advocate for law reforms and law enforcement, including exchange of information and communication for action.
- Institutionalise cross border cooperation by signing bilateral and multilateral agreements, among others, for sharing of information and apprehension and prosecution of the traffickers and their agents.
- Ensure collection of disaggregated data on the victims of trafficking, including ethnic origin/nationality.
- Amend all laws which restrict birth registration, restrict the freedom of movement, impose punishment and make such persons vulnerable to trafficking.
- Ensure that anti-trafficking laws do not victimise and criminalise the victims of trafficking.

### *Gender*

- Governments should address security needs for girls, ensuring safe passage to and from school; which could include increased police presence or provisions for girls to travel in groups or be provided with escorts.
- Governments should establish accessible mechanisms for girls to make confidential complaints regarding sexual harassment or violence by other students, teachers, staff or principals. Ensure the prompt and effective investigation of such complaints, and prompt and appropriate disciplinary

action against perpetrators, including counselling, suspension, termination and prosecution when necessary. Bring criminal charges where indicated.

- Governments should provide incentives for girls to attend school such as providing free meals and stipends conditional to school attendance.
- Governments should address gender inequalities that lead girls to be withdrawn from school to support families affected by AIDS. Sensitise families and communities about the importance of keeping girls in school as a safeguard against HIV infection. Ensure that programmes to combat child labour, particularly child prostitution and child domestic labour, have a clear HIV and AIDS component.
- Governments should amend national laws as necessary to ensure that domestic workers receive the same rights as other workers, including a minimum wage, time off, and limits on hours of work, and that the minimum age for employment conforms to international standards and is effectively enforced.

### *HIV and AIDS*

- Develop and introduce appropriate legislation and policies to overcome discrimination faced by HIV and AIDS affected children (and children of parents affected by HIV and AIDS) and change people's attitudes accordingly.
- Legislation reform or new legislation on the rights of HIV and AIDS must be complemented with awareness-raising on children living with HIV and AIDS and their rights.
- Raise awareness and educate children living with HIV and AIDS on their rights to enable them to challenge discrimination, stigma and denial of their rights in their daily lives.
- Institutional and other monitoring mechanisms must enforce the rights of children living with HIV and AIDS and provide powerful processes for mitigating the worst effects of discrimination and stigma.
- Raise awareness on misconceptions, fear and prejudice regarding HIV and AIDS in order to tackle discrimination at the community and national levels. This must be in conjunction with providing an enabling environment to increase the visibility of children with HIV and AIDS as a 'normal' part of any society.
- Increase access to information, prevention, tools and services to reduce spread of HIV and AIDS and the disease related stigma and discrimination. Methods to reduce harm must be included in comprehensive responses and must be broadened to include needs of young injecting drug users.
- Special attention must also be paid to female sexual partners, to men who have sex with men and to the young women and men who engage in sex work.
- Engage and advocate with unconvinced political leaders on the necessity to act without losing face or damaging their country's image for increased allocation of resources to prevent the epidemic from escalating.

### *IDPs and Refugees*

- Adhere to the United Nations 'Guiding Principles on Internal Displacement', 'Guidelines on the Protection of Refugee Children' and the 'Convention on the Rights of the Child'. This should include the proper registration of all refugees and internally displaced persons.

- Protect children from rebel abduction, forced recruitment, forced labour and sexual enslavement; and support the demobilisation and reintegration of children and adolescents who have escaped from rebel groups.
- End the rape, 'defilement' and sexual exploitation of girls and boys by enforcing national law and prosecuting all perpetrators of this violence.
- Increase collaborative work with different layers of government ministries, NGOs and civilians to improve security around IDP camps, refugee settlements, schools, medical facilities and transportation routes.
- Establish national programmes to increase the professionalism of armed forces, including education on IDP and refugee children, international humanitarian legal standards and protection.
- Assign a lead agency for IDPs to work with the government to provide a comprehensive response to children's protection and care. This should be done by allowing independent monitoring of military conduct vis-à-vis children, especially where rape and sexual exploitation of children are said to be committed.
- Ensure that local and international NGOs work in partnership with children and other community members, UN bodies and governments to address the needs, rights and protection of refugee and IDP children.
- Increase existing support for the livelihood of refugee and IDP children. Interventions should include income-generating activities, vocational and skills training, relevant education including mine awareness. Right to education of refugee and IDP children to attend educational institutions must be fulfilled by ensuring presence of trained teachers, books and clothing.
- Increase security, dismantle IDP camps when access to safe and secure land is available, ensure safe access to land for adolescents and others, and provide them with mine awareness.
- Establish and increase support for existing psychosocial support services for children, especially formerly abducted children.
- Ensure the active involvement of children in the planning, designing, implementation and evaluation of all services and activities targeted at them.
- Create opportunities for dialogue between children and adults in the community, and ensure children's full participation in community decision-making, including peace initiatives.
- Encourage and provide support to the creation and strengthening of community children's groups and associations, including the implementation of 'child friendly spaces'. Ensure children remain or become more involved in groups and activities at the community level, and support their leadership to become more active advocates at a local, national and international level to achieve all of the aforementioned recommendations.

### *Indigenous Children*

- Ensure indigenous children enjoy all their rights and without discrimination by reviewing and where applicable introducing legislation on equal access to appropriate services including health, education, social services, housing, potable water and sanitation.
- Train relevant professionals working with and for indigenous children.
- With the full participation of indigenous children, communities and other children, develop public awareness campaigns to combat negative attitudes and misperceptions about indigenous peoples.

- Undertake and strengthen mechanisms for data collection, which will identify existing gaps and barriers to the enjoyment of human rights by indigenous children and with a view to developing legislation, policies and programmes to address such gaps and barriers.
- Work closely with indigenous children, adults and organisations to seek consensus on development strategies, policies and projects aimed at implementing children's rights, and set up adequate institutional mechanisms involving all relevant actors and provide sufficient funding to facilitate the participation of children in the design, implementation and evaluation of these programmes and policies.
- Take all necessary action to ensure that indigenous children enjoy their own culture and can use their own language (including in schools) and encourage the mass media to respect the linguistic needs of the child who is indigenous.
- Take effective actions to safeguard the integrity of indigenous families and assist them in their child-rearing responsibilities.
- Take all necessary measures to implement the right to health, both modern and traditional health practices, of indigenous children with special attention to adolescents regarding drug abuse, alcohol consumption, mental health and sex education.
- Ensure access for indigenous children to appropriate and high quality education while taking complementary measures to eradicate child labour through the provision of informal education where appropriate.
- Recognise the strengths of indigenous communities to address the problems of indigenous children and document best practices for the promotion and protection of the rights of indigenous children in consultation with relevant NGOs, indigenous experts and indigenous children.

### *Juvenile Justice*

- Law enforcement officers (both practicing and in training) and the judiciary need to know their responsibilities regarding different legislations and policies for institutional treatment of juvenile offenders.
- Interventions for released juvenile offenders need to include income generating activities, life skills training and psychosocial support to rebuild their lives within the communities and stop the cycle of re-offending.
- Support to juveniles on probation needs to include relevant educational access or vocational training. Educational and vocational training should be suited to every child's needs and abilities and designed to prepare him/her for return to society and entry into the work force.
- Governments should work with educational authorities to ensure that education provided in juvenile detention centres is recognised by schools outside of the detention system so that children may continue their education in regular schools once they have completed their sentences or been released.
- Children under trial need to have access to free legal service within a specified time and with respect to privacy of the child. Where the government is not able to provide legal service within a specified time, assistance from NGOs should be sought.
- Coordination between the law enforcement officers, judiciary and prison departments need to be increased and improved.
- Rehabilitation programmes in prison should be holistic, targeting juveniles' education, health, nutrition, psychotherapy, skills training and recreation.

- Shelter homes need to be made available for those children whose guardians cannot be traced.

### *Sexual Orientation*

- Government must enact legislation to protect children from harassment and discrimination on the basis of their sexual orientation and gender identity by explicitly prohibiting both.
- Define harassment based on sexual orientation and gender identity to include unwelcome verbal, written or physical conduct, such as negative name calling or imitating mannerisms, directed at a person because of his or her actual or perceived sexual orientation or gender identity.
- Establish procedures for addressing complaints. This must be inclusive of preventing retaliation against those who report harassment or who take part in disciplinary proceedings (for example, as witnesses).
- Provide referral to law enforcement officials when a reported incident of harassment appears to be a crime.
- Provide introductory and ongoing training to all staff-teachers, including judiciary and law enforcement officials and educators on addressing the needs of lesbian, gay, bisexual and transgender children. This must include how to intervene to stop harassment that occurs in their presence and are reported (complaint made).
- Establish and enforce a policy on 'non disclosure' of information concerning a child's sexual orientation or gender identity to others including to children's peers, parents/guardians or the local community.
- Introduce children to the principles of respect and tolerance at an early age, starting with elementary school. General programmes should integrate the idea of tolerance and respect for lesbian, gay, bisexual and transgender persons in an age-appropriate manner.
- Make information about gay, lesbian, bisexual and transgender issues easily available including in school libraries. This information should include videos, pamphlets and books, including those written by the youth for the use of students, teachers and parents; and the information must be up-to-date.
- Ensure that students are able to borrow materials on issues related to sexual orientation and gender identity in a confidential manner. In some schools, for example, students are able to borrow books on these and other adolescent development issues from their counsellors rather than checking them out from the school library.
- Integrate age-appropriate discussion about gay issues into the school curriculum in relevant core subject areas such as literature, history and current affairs. Evaluate materials currently in use to ensure that they do not present outdated information or stereotypical messages.
- Include information that is specific to the needs of lesbian, gay, bisexual and transgender youth in health education on sexuality and sexually transmitted diseases. Such information should not be presented with the implicit message that being gay, lesbian, bisexual or transgender is itself a health problem.



## *9* Conclusion

**T**he government and duty bearers are obliged to formulate and implement policies and laws, allocate resources and develop structures and mechanisms to ensure that the most marginalised and discriminated groups of children and their communities are equally included in the promotion of rights. Accountability should be strengthened through identification of gaps within the legal system, capacity building and advocacy. The civil society needs to be held accountable to promote diversity-friendly and inclusive schools, institutions, communities and families. The capacity of staff and partners to address discrimination needs to be built through CRP coaching. Tools and mechanisms have to be developed to ensure that Save the Children Sweden and staff adopt and implement gender and diversity policies and action plans. Inclusive physical structures and diversity-friendly policies and attitudes must be promoted.

The collection of accurate and disaggregated data is fundamental for understanding the intensity and complexity of discrimination of vulnerable groups and taking appropriate measures to combat it within the family, community and society as a whole. Both institutionalised discrimination and that of vulnerable groups across many levels has numerous similar characteristics. They all exhibit a power struggle of politics, economics and cultural superiority. They are enforced by exclusion, stigmatisation and harassment in society in general and invisible boundaries.

Given the complexity of the issue, there are obviously no readymade fix-it solutions and many of the issues need to be contextualised as country and community specific. However, governments must take certain measures to ensure that their laws, policies and practices do not directly or indirectly contribute to discrimination. Also, the measures taken need to address the root causes of discrimination against vulnerable groups. Equity needs to be ensured to create a society where all children are able to access their rights to the fullest extent possible.

Addressing discrimination from a rights-based approach means that organisations will have to address various forms of discrimination (such as gender, age, ability, sexual preference, HIV and AIDS status, religion, ethnicity, caste and so forth) from a multi-sectoral approach, looking at both immediate and underlying causes - such as unequal power relations and patriarchal structures. It is vital to call upon organisations to mobilise boys and men in the society to protest against violence and to take initiatives for more equal gender roles and relationships. Action needs to be taken to ensure that the right to non-discrimination is protected through the Constitution, laws and policies, and that these laws and policies are implemented and closely monitored. It is, at the same time, important to work from a bottom-up approach to address values, attitudes and practices that perpetuate and reinforce discrimination and inequalities at the community level.

The principle of non-discrimination is closely related to the principles of participation and accountability, and it is often the lack of participation of rights holders and accountability by the key duty-bearers (such as government officials, the family and community members) that perpetuates

and reinforces discrimination. By empowering and working closely with those children who face discrimination, organisations will be able to develop relevant actions and ensure that duty bearers do not only listen to girls and boys but that they also act on children's agenda.

Working from a rights-based approach also implies that organisations have to address discrimination simultaneously both through their programmes and from within their setup. Therefore, it is important to have a diverse workforce with staff members from various backgrounds at all levels of the organisations, which promotes values of equality and counteracts stereotypes and discriminatory behaviour.





# Annexure

# Annex 1: International Human Rights Treaties

## ***Convention on the Elimination of All Forms of Racial Discrimination***

*Adopted and opened for signature and ratification by  
General Assembly resolution 2106 (XX) of 21 December 1965  
entry into force 4 January 1969, in accordance with Article 19*

### **The States Parties to this Convention**

Considering that the Charter of the United Nations is based on the principles of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action, in co-operation with the Organization, for the achievement of one of the purposes of the United Nations which is to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Considering that the Universal Declaration of Human Rights proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set out therein, without distinction of any kind, in particular as to race, colour or national origin,

Considering that all human beings are equal before the law and are entitled to equal protection of the law against any discrimination and against any incitement to discrimination,

Considering that the United Nations has condemned colonialism and all practices of segregation and discrimination associated therewith, in whatever form and wherever they exist, and that the Declaration on the Granting of Independence to Colonial Countries and Peoples of 14 December 1960 (General Assembly resolution 1514 (XV)) has affirmed and solemnly proclaimed the necessity of bringing them to a speedy and unconditional end,

Considering that the United Nations Declaration on the Elimination of All Forms of Racial Discrimination of 20 November 1963 (General Assembly resolution 1904 (XVIII)) solemnly affirms the necessity of speedily eliminating racial discrimination throughout the world in all its forms and manifestations and of securing understanding of and respect for the dignity of the human person,

Convinced that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice, anywhere,

Reaffirming that discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations

among nations and is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same State,

Convinced that the existence of racial barriers is repugnant to the ideals of any human society,

Alarmed by manifestations of racial discrimination still in evidence in some areas of the world and by governmental policies based on racial superiority or hatred, such as policies of apartheid, segregation or separation,

Resolved to adopt all necessary measures for speedily eliminating racial discrimination in all its forms and manifestations, and to prevent and combat racist doctrines and practices in order to promote understanding between races and to build an international community free from all forms of racial segregation and racial discrimination,

## **PART I**

### **Article 1**

1. In this Convention, the term “racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

### **Article 2**

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

- (a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;
- (b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;
- (c) Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;
- (d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;
- (e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.

2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment

of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

### **Article 3**

States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

### **Article 4**

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

- (a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;
- (b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;
- (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

### **Article 5**

In compliance with the fundamental obligations laid down in article 2 of this Convention, State Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (a) The right to equal treatment before the tribunals and all other organs administering justice;
- (b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;
- (c) Political rights, in particular the right to participate in elections—to vote and to stand for election—on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;
- (d) Other civil rights, in particular:
  - (i) The right to freedom of movement and residence within the border of the State;
  - (ii) The right to leave any country, including one's own, and to return to one's country;

- (iii) The right to nationality;
- (iv) The right to marriage and choice of spouse;
- (v) The right to own property alone as well as in association with others;
- (vi) The right to inherit;
- (vii) The right to freedom of thought, conscience and religion;
- (viii) The right to freedom of opinion and expression;
- (ix) The right to freedom of peaceful assembly and association;
- (e) Economic, social and cultural rights, in particular:
  - (i) The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;
  - (ii) The right to form and join trade unions;
  - (iii) The right to housing;
  - (iv) The right to public health, medical care, social security and social services;
  - (v) The right to education and training;
  - (vi) The right to equal participation in cultural activities;
- (f) The right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks.

#### **Article 6**

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

#### **Article 7**

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

## ***Convention on the Elimination of All Forms of Discrimination against Women***

Adopted and opened for signature, ratification and accession by  
General Assembly resolution 34/180 of 18 December 1979  
entry into force 3 September 1981, in accordance with article 27(1)

### **The States Parties to the present Convention,**

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

Emphasizing that the eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, the relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

## **PART I**

### **Article I**

For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

### **Article 2**

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not

- yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
  - (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
  - (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
  - (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
  - (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
  - (g) To repeal all national penal provisions which constitute discrimination against women.

### **Article 3**

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

### **Article 4**

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

### **Article 5**

States Parties shall take all appropriate measures:

- (a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;
- (b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

**Article 6**

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

**PART II****Article 7**

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
- (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

**Article 8**

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

**Article 9**

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

**PART III****Article 10**

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

- (a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
- (b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
- (c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

- (d) The same opportunities to benefit from scholarships and other study grants;
- (e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;
- (f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;
- (g) The same Opportunities to participate actively in sports and physical education;
- (h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

### **Article 11**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to work as an inalienable right of all human beings;
- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
- (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
- (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
- (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

- (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
- (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
- (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
- (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

**Article 12**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

**Article 13**

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to family benefits;
- (b) The right to bank loans, mortgages and other forms of financial credit;
- (c) The right to participate in recreational activities, sports and all aspects of cultural life.

**Article 14**

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

- (a) To participate in the elaboration and implementation of development planning at all levels;
- (b) To have access to adequate health care facilities, including information, counselling and services in family planning;
- (c) To benefit directly from social security programmes;
- (d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;
- (e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;
- (f) To participate in all community activities;
- (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
- (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

**PART IV****Article 15**

1. States Parties shall accord to women equality with men before the law.

2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

### **Article 16**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- (a) The same right to enter into marriage;
- (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
- (c) The same rights and responsibilities during marriage and at its dissolution;
- (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
- (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
- (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

## **United Nations Convention on the Rights of the Child**

*Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989*

*entry into force 2 September 1990, in accordance with article 49*

### **Preamble**

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Recognizing the importance of international co-operation for improving the living conditions of children in

### **PART I**

#### **Article 2**

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

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

#### **Article 3**

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

### **Article 6**

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

### **Article 7**

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

### **Article 8**

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

### **Article 11**

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

### **Article 12**

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

### **Article 14**

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

### **Article 22**

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

### **Article 23**

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

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

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

### **Article 30**

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

### **Article 32**

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

### **Article 34**

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

### **Article 35**

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

### **Article 39**

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

**Article 40**

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General

## **International Covenant on Civil and Political Rights**

*Adopted and opened for signature, ratification and accession by  
General Assembly resolution 2200A (XXI) of 16 December 1966  
entry into force 23 March 1976, in accordance with Article 49*

### **Preamble**

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

### **Article 2**

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present

### **Article 3**

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

### **Article 4**

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any

### **Article 8**

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3.

(a) No one shall be required to perform forced or compulsory labour;

### **Article 24**

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

### **Article 25**

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

### **Article 26**

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

### **Article 27**

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

## **International Covenant on Economic, Social and Cultural Rights**

*Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966  
entry into force 3 January 1976, in accordance with article 27*

### **Preamble**

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

### **Article 2**

1. 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.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

### **Article 3**

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

### **Article 7**

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
  - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
- (b) Safe and healthy working conditions;
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

### **Article 13**

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

### **Article 15**

1. The States Parties to the present Covenant recognize the right of everyone:
- (a) To take part in cultural life;
  - (b) To enjoy the benefits of scientific progress and its applications;
  - (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

## ***Universal Declaration of Human Rights, 1948***

### **Preamble**

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

### ***The General Assembly,***

Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

### **Article 1**

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

### **Article 2**

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

### **Article 3**

Everyone has the right to life, liberty and security of person.

### **Article 4**

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

### **Article 7**

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

### **Article 15**

1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

### **Article 16**

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

### **Article 17**

1. Everyone has the right to own property alone as well as in association with others.

### **Article 18**

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

### **Article 22**

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

### **Article 23**

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.

### **Article 25**

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

### **Article 27**

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

## **INDIGENOUS CHILDREN'S RIGHTS<sup>97</sup>** (Excerpts)

### International instruments with particular relevance to the rights of indigenous children

The following human rights instruments are legally binding for signatories.

- *1965 International Convention on the Elimination of All Forms of Racial Discrimination:*

Article 2 which calls upon States Parties to take – in social, economic, cultural and other fields – measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them and thus ensure the full and equal enjoyment of their human rights.

Article 5 calls upon State Parties to guarantee to everyone, without distinction, their civil rights and their economic, social and cultural rights.

- *1966 International Covenant on Civil and Political Rights:* this treaty contains, among others, articles on the right to protection from discrimination as well as the right to self-determination for all peoples. These include the right to determine one's political status and economic, social and cultural development, and the right of persons belonging to ethnic, religious or linguistic minorities to enjoy their own culture, profess and practice their own religion and use their own language. (The Human Rights Committee has emphasized that indigenous peoples are covered by this article, even though they may not be a 'minority' population).
- *1966 International Covenant on Economic, Social and Cultural Rights:* this treaty includes articles on the rights of children to protection and assistance without discrimination, the right to education that promotes understanding, tolerance and friendship among all racial, ethnic or religious groups, and the right to take part in cultural life, together with the responsibility of States Parties to conserve, develop and diffuse culture.
- *1989 ILO Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries:* see Box 6.

## International agreements relevant to the rights of indigenous children

The following international standards and commitments offer important international guidelines for the realization of the rights of indigenous children.

- *1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*: as regards children, the right of parents or legal guardians to organize family life in accordance with their religion or belief; the right to have access to education in the matter of religion or belief in accordance with the wishes of the child's parents; and the right of the child to be protected from any form of discrimination on the basis of religion or belief.
- *1986 Declaration on the Right to Development*: in particular, Article 5 calls upon States to eliminate violations of the human rights of peoples affected by situations such as those resulting from apartheid, all forms of racism and racial discrimination, colonialism and refusal to recognize the fundamental right of peoples to self-determination.
- *1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*: includes articles relating to State protection of ethnic, cultural, religious and linguistic identities; the right of minorities to enjoy their own culture, religion and language; and the requirement that national policies and programmes have due regard for the interests of persons belonging to minorities.
- *1992 Agenda 21*, adopted at the *United Nations Conference on Environment and Development (Earth Summit)*: Chapter 26 calls upon governments to ensure that indigenous youth have access to natural resources, housing and a healthy environment.
- *1993 Vienna Declaration on Human Rights and Programme of Action*, adopted at the *World Conference on Human Rights*: Part 1, Paragraph 20 acknowledges the unique contribution of indigenous people to the development and plurality of society. It calls upon States to ensure the full and free participation of indigenous people in all aspects of society. States should also take positive steps to ensure respect for all human rights and fundamental freedoms of indigenous people, on the basis of equality and non-discrimination, and recognize the value and diversity of their distinct identities, cultures and social organization.
- *2002 A World Fit For Children*, outcome document from the *UN General Assembly Special Session on Children*: Paragraph 20 asserts that appropriate measures should be taken to end discrimination, provide special support and ensure equal access to services for indigenous children. Paragraph 40(5) states that governments will ensure that indigenous children have access to quality education on the same basis as other children and that this education should be provided in a manner that respects their heritage. Educational opportunities should also enable indigenous children to develop understanding of and sustain their cultural identity including language and values.

## The International Labour Organization Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries

ILO Convention No. 169, adopted in 1989 and ratified by 17 countries (none, however, from Africa or Asia), is to date the only legally binding instrument of international law to deal exclusively with the rights of indigenous peoples. The Convention builds upon the Indigenous and Tribal Populations Convention (No. 107), adopted in 1957, which was the first attempt to codify indigenous peoples' rights in international law. Convention No. 107 covered a range of issues such as land rights, working conditions, health and education.

Convention No. 169 promotes respect for the cultures, ways of life, traditions and

customary laws of the indigenous and tribal peoples who are covered by it. It recognizes their existence as elements of their national societies with their own identity, structures and traditions. It acknowledges that these peoples have the right to take part in the decision-making process as it affects them and that their contribution will be a valuable one in the country in which they live.<sup>11</sup> Significantly, this Convention specifically acknowledges the importance of land for indigenous peoples and recognizes their right to participate in the use, management and conservation of natural resources.

The Convention has two explicit provisions on children. Both of these deal with education and language as key elements in the development of a multicultural society.

Article 28 states that indigenous children shall, wherever practicable, be taught to read and write in their own language or in the language most commonly used by the group to which they belong. It goes on to require that "adequate measures" be taken to ensure that indigenous peoples also have the opportunity to attain fluency in the national language or in one of the official languages of the country, while at the same time preserving and promoting the development and practice of their own language.

Article 29 also relates to the potential of education to promote multiculturalism: "The imparting of general knowledge and skills that will help children belonging to the peoples concerned to participate fully and on an equal footing in their own community and in the national community shall be an aim of education for these peoples."

Various other ILO instruments are relevant to indigenous and tribal peoples, including the Forced Labour Convention, 1930 (No. 29); the Discrimination (Employment and Occupation) Convention, 1958 (No. 111); the Minimum Age Convention, 1973 (No. 138); the Worst Forms of Child Labour Convention, 1999 (No. 182); and the Declaration on Fundamental Principles and Rights at Work, 1998.

<sup>97</sup> Taken from: UNICEF, Ensuring the Rights of Indigenous Children, UNICEF Innocenti Research Centre: Florence.

## The draft United Nations Declaration on the Rights of Indigenous People

The Working Group on Indigenous Populations completed its draft declaration in 1993 and, in 1995, the Commission on Human Rights set up its own working group to review this draft. More than 100 indigenous organizations from around the world participate in this process.

The draft declaration consists of 45 articles, related to:

- rights to self-determination, participation in the life of the State, nationality and freedom from discrimination;
- threats to the survival of indigenous peoples as distinct peoples;
- the spiritual, linguistic and cultural identity of indigenous peoples;
- education, information and labour rights;
- participatory rights, development and other economic and social rights;
- right to land and resources;
- autonomy and indigenous institutions; and
- the effective implementation of the Declaration and general concluding provisions.<sup>12</sup>

Among the provisions of the draft declaration, there are a number that deal specifically with the rights of indigenous children:

### Article 6

Indigenous peoples have the collective right ... to full guarantees against ... any ... act of violence, including the removal of indigenous children from their families or communities under any pretext.

### Article 11

States ... shall not ... recruit indigenous children into the armed forces under any circumstances.

### Article 14

Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures.

### Article 15

Indigenous children have the right to all levels and forms of education of the State. All indigenous peoples also have ... the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning. Indigenous children living outside their communities have the right to be provided access to education in their own culture and language.

### Article 22

Indigenous peoples have the right to special measures for the immediate, effective and continuing improvement of their economic and social conditions ... . Particular attention shall be paid to the rights and special needs of indigenous ... children ... .The lengthy process of drafting this declaration testifies to the complexity and diversity of indigenous peoples' situations around the

world, which must be reflected in the draft's provisions. In addition, there are practical implications of certain articles that need to be taken into account. For example, the right of indigenous children living outside their communities to be provided access to education in their own language and culture (Article 15) may present challenges for its implementation, including the level of resources required for its enforcement.

### Recommendations from the Second Session of the Permanent Forum on Indigenous Issues, May 2003

The Permanent Forum made recommendations in a number of areas, including:

#### *Indigenous children and youth*

the Forum recommended that UN bodies address issues related to the trafficking and sexual exploitation of indigenous girls and urged States to develop effective rehabilitation programmes. In view of the significant movement of indigenous youth to urban areas worldwide, it was recommended that the World Bank, ILO and UNICEF carry out an in-depth study of legal frameworks and social programmes for indigenous youth in selected countries in order to assess key problems and formulate policies and strategies. The Forum further recommended that governments and UN bodies prepare specific policies and implement programmes for indigenous children and youth to promote their human rights; strengthen, recover and conserve their languages; promote their culture and education; reaffirm their traditional knowledge; and contribute to their self-esteem. It also recommended that governments be urged to ensure greater protection and humane treatment for incarcerated indigenous children and youth, and take steps to ensure their reintegration.

#### *Health*

the Forum urged relevant UN bodies to incorporate indigenous healers and cultural perspectives on health and illness into their policies, and to undertake regional consultations with indigenous peoples on those issues. It also urged States to expand their national health systems to provide holistic health programmes for indigenous children. It recommended that States address malnutrition in indigenous children by adopting special measures to ensure and protect the cultivation of traditional food crops. The Forum also requested that the World Health Organization undertake a study on the prevalence and causes of suicide among indigenous youth.

#### *Education*

the Forum recommended the creation of academic institutions to train indigenous leaders and urged universities to develop curricula on indigenous peoples. It also recommended that States reduce illiteracy rates, truancy and drop-out rates, and promote primary education for indigenous people. In addition, the history and culture of indigenous peoples should be fostered in education systems to strengthen their identity.

#### *Culture*

the Forum recommended that governments introduce indigenous languages in public administration in indigenous territories and that governments and UN bodies support indigenous media and promote the engagement of indigenous youth in indigenous programmes.

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For more information, please contact:

Save the Children Sweden  
Regional Office for South & Central Asia  
Sanepa Road, Kupundole, Lalitpur  
GPO Box: 5850, Kathmandu, Nepal  
Tel: +977-1-5531928/9  
Fax: +977-1-5527266  
[rosca@sca.savethechildren.se](mailto:rosca@sca.savethechildren.se)  
[www.rb.se](http://www.rb.se)

