The Protective Environment: Development Support for Child Protection

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ABSTRACT

Children's protection from violence, exploitation, and abuse is weak in much of the world, despite near universal ratification of the Convention on the Rights of the Child. Often, improved legislation is not accompanied by significant changes in state or private practices and capacity. The types of programmatic response supported have tended to be curative rather than preventative in nature, addressing symptoms rather than the underlying systems that have failed to protect children. This article proposes a conceptual framework for programming, identifying elements key to protecting children in any environment as well as the factors that strengthen or undermine the protection available. Using this shared platform for analysis, human rights and development actors can bring greater coherence to activities that strengthen child protection.

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I.   INTRODUCTION

There are many obstacles to improving children's protection from violence, exploitation, and abuse.[1] Traditional practices are one; others range from a lack of national capacity to the absence of the rule of law. Through much closer, protection focused cooperation, development agencies and human rights actors should develop strategies to address these gaps in general measures of implementation. This article proposes the Protective Environment Framework as a conceptual model for such analysis and programmatic support.

This article first will summarize the current state of children's protection from violence, exploitation, and abuse. Noting that activities by donors and agencies in support of child protection have focused on legal reform and on service delivery, the article suggests the need to adopt an approach that considers a range of systemic factors, stressing prevention alongside palliation. Only such broader, systemic child protection strategies will have lasting impact.

The Protective Environment Framework, outlined in section III identifies eight factors that are instrumental in keeping children safe from harmful situations. These factors can all be strengthened, and changes measured, through the targeted support of international and national actors. They are not the only factors that explain or inhibit violence, exploitation, and abuse against children. They do, however, lend themselves readily to programmatic action, through the engagement of many actors at different levels (including national and local government, communities, families, children themselves, and the media).

This Framework encompasses a range of activities routinely supported by development agencies and nongovernmental organizations (NGOs), and others more commonly addressed by human rights agencies and advocates; as such it aims to provide a platform for closer cooperation between the human rights and development communities.

In section IV, the article draws attention to significant challenges in child protection work. These include governments' and the public's, sensitivity on the subject of most child protection abuses, leading to a reluctance to collect data, among other things; donor expectations of rapidly visible results, notwithstanding the longer term change on which

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1.   The term Child Protection, as used by The United Nations Children's Fund (UNICEF), refers to the protection of children against violence, exploitation, and abuse. It includes the situation of children in conflict with the law, and children without their customary caregivers (such as orphans, children in institutions, and those separated from families in time of conflict or disaster)—conditions that render children particularly vulnerable to violence, abuse, and exploitation.

some aspects of child protection depend; the perception that children's protection against violence and exploitation is marginal to critical development processes; and the limited engagement of the private sector. Supporting the systems that underpin child protection, including social sector policies and capacity, is costly. Helping bring about the requisite changes not only to laws and policies but also to attitudes, customs, and beliefs that permit continued harm to children is a difficult and long term endeavor.

Of note, therefore, are a number of positive developments, including initiatives for increased United Nations cooperation at the country level in support of human rights; the formulation of protection related indicators and their inclusion in standard surveys; and public awareness of child protection, which has encouraged the corporate sector to adopting codes of conduct.

This article provides little discussion of violence, exploitation, and abuse in developed countries, as it focuses on a conceptual framework for communicating the underpinnings of child protection to the development community. The Protective Environment Framework is, however, equally applicable at any stage of a country's development.

II. CHILD PROTECTION TODAY: CHILDREN UNPROTECTED

The rights of the child appear to be the least contentious human rights in the world, particularly as they pertain to protection against violence, exploitation, and abuse. However, despite near universal ratification of the Convention on the Rights of the Child (CRC),[2] large numbers of children throughout the world are poorly protected. Beyond the CRC itself, several other child protection instruments exist. The two Protocols to the CRC both address protection rights: one on the sale of children, child prostitution, and child pornography, the other on the involvement of children in armed conflict.[3] ILO Convention 182 on Elimination of the Worst Forms of Child Labor and the

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2. Convention on the Rights of the Child, *adopted* 20 Nov. 1989, G.A. Res. 44/25, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (1989) (*entered into force* 2 Sept. 1990), *reprinted in* 28 I.L.M. 1448 (1989) [hereinafter CRC]. Only the United States and Somalia have yet to ratify the CRC. Many states have, however, entered reservations to particular articles of the CRC, or to the CRC as a whole; some of these are incompatible with the object and purpose of the CRC.

3. Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts, G.A. Res. 54/263, 54 U.N. GAOR, 54th Sess., Supp. No. 497, A/RES/54/263, Annex I (2000) (*entered into force* 12 Feb. 2002); Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, *adopted* 25 May 2000, G.A. Res. 54/263, Annex II, U.N. GAOR, 54th Sess., Supp. No. 49, U.N. Doc. A/RES/54/263, Annex II (2000) (*entered into force* 18 Jan. 2002).

Trafficking Protocol to the Palermo Convention on Transnational Organised Crime add to the panoply of relevant international instruments.[4] Formally, at least, states have no quarrel with the principle that children should not be abused, trafficked, exploited for sex, or exposed to hazardous labor.

Despite the high level of support expressed by governments, these international commitments have had insufficient practical impact. Abuses continue against children, notably the worst forms of child labor (including the sex industry, trafficking, child soldiering, and forced and bonded labor), harmful traditional practices (such as female genital mutilation/cutting (FGM/C) and early and forced marriage), and myriad other forms of maltreatment. Current victims of these abuses likely number more than 300 million.[5]

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4. Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO No. 182), *entered into force* 19 Nov. 2000, *reprinted in* 38 I.L.M. 1207 (1999) [hereinafter ILO Convention No. 182]; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 55/25, Annex II, 55 U.N. GAOR, Supp. No. 49, at 60, U.N. Doc. A/45/49 (Vol. I) (2001).

5. *See e.g.,* INTERNATIONAL LABOR ORGANIZATION (ILO), A FUTURE WITHOUT CHILD LABOUR 1, 32 (2002), *available at* www.ilo.org/dyn/declaris/DECLARATIONWEB.DOWNLOAD_BLOB? Var_DocumentID=1566 (180 million children in the worst forms of child labor, including 1.2 million children trafficked yearly); UNITED NATIONS INTERNATIONAL CHILDREN'S FUND (UNICEF), A WORLD FIT FOR CHILDREN (2002), *available at* www.unicef.org/publications/ pub_wffc_en.pdf; DEFENCE FOR CHILDREN INTERNATIONAL, KIDS BEHIND BARS: A STUDY ON CHILDREN IN CONFLICT WITH THE LAW 135 (2003), *available at* www.defenceforchildren.nl/ariadne/ loader.php/en/dci/documenten/RapportKBB.pdf (over 1 million children detained as a result of being in conflict with the law); Office for Coordination of Humanitarian Affairs, Protection of Civilians in Armed Conflict, Children in War, *available at* www.reliefweb.int/ ocha_ol/advocacy/production/beta/children_war (300,000 child soldiers, over 2 million children dead as a direct result of armed conflict since 1990, and 22 million children displaced by conflict); WORLD HEALTH ORGANIZATION (WHO), REPORT OF THE CONSULTATION ON CHILD ABUSE PREVENTION 17 (1999), *available at* www.who.int/violence_injury_prevention/ media/en/235.pdf ("40 million children aged 0–14 suffer from abuse and neglect, and require health and social care"); WHO, WORLD REPORT ON VIOLENCE AND HEALTH 60 (2002), *available at* www.who.int/violence_injury_ prevention/violence/world_report/en/ full_en.pdf [hereinafter WHO REPORT ON VIOLENCE AND HEALTH] (57,000 children under fifteen dead as a result of homicide in 2000); Dick Sobsey, *Violence and Children with Disabilities: An International Perspective*, 24 ONE-IN-TEN, (2003), *available at* www.rehab-international.org/publications/10-24.pdf ("For each child killed by violence, it is likely that at least 100 children are injured and many of those will have permanent disabilities as a result."); UNICEF, Child Protection, Female Genital Mutilation, *available at* www. unicef.org/protection/index_ genitalmutilation.html (between 100 and 130 million women and girls alive today in Africa have undergone some form of genital mutilation). Millions of other children are affected by the violence and abuse that flourish in indirect connection with armed conflict. Global figures are not available for many types of violence and exploitation. As an indicator of high vulnerability to exploitation and abuse, 15 million children under the age of eighteen had been orphaned as a result of HIV/AIDS by 2003, an increase of 3.5 million in two years. UNAIDS ET AL., CHILDREN ON THE BRINK 2004: A JOINT REPORT OF NEW ORPHAN ESTIMATES AND A FRAMEWORK FOR ACTION 7 (2004), *available at* www.unicef.org/publications/files/cob_layout6-013.pdf.

These estimated 300 million children have already suffered failures of protection, and may need help with physical and psychological recovery and social re-integration, as is their right. Such help is an important component of child protection. However, hundreds of millions of other children still lack a protective environment—the presence of factors that will tend to keep them safer in the face of threats. They, too, need protection; the prevention of deliberate harm should be built into their surroundings. While no child anywhere has absolute protection from violence, their safety is greatly reduced where flogging is imposed as a sentence, honor killing is a socially sanctioned duty, where the government will not address evidence of child sexual exploitation, and children abused at home have nowhere to turn. In these cases, neither legislation nor traditions work to protect the child. Nor will the necessary social welfare institutions feature on the budget of a government in denial. As this article will also illustrate, the elements of a protective environment, among them legislation, traditions, national capacity, and government commitment, are strongly interlinked.

Public knowledge about the content and implications of applicable human rights treaties, including the CRC, is often sparse. Issues that are sensitive, as child protection issues often are, simply may not be discussed. More importantly, social consensus may not exist around the protections the government is committed to uphold. Where that is the case, and families, communities, and institutions do not attach high value to all forms of child protection, the best legislation in the world cannot keep children safe.

The exploitation of children, sexually and for harmful forms of labor, and violence against them, are detrimental to national development. They contribute to childhood death, disability, and lifelong developmental problems, and affect children's ability to learn as well as their evolving capacities as parents, as citizens, and as productive members of society.

A. Beyond Legal Reform

Law reform has long been an instrument for improving the protection of children. Human rights and development agencies, NGOs, and bilateral donors have all advocated and provided technical support for legal reform and training, from an explicitly human rights perspective. International human rights bodies regularly recommend that states bring legislation into line with international law, provide effective remedies for wronged individuals, and strengthen implementation mechanisms.[6] Laws and their

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6. For example, states are obliged to undertake a comprehensive review of all domestic legislation and related administrative guidance as part of ensuring compliance with the

supporting institutions are critical to the realization of rights, and crucial to building a protective environment for children. This being true, the CRC acknowledges the context in which laws and legal authority operate, and that must also be addressed for children to be protected, noting that:

> 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.

> States Parties shall take *all appropriate legislative, administrative, social and educational measures* to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.[7]

The UN Committee on the Rights of the Child (Committee), the treaty body examining states parties' implementation of the CRC, asks states, in its *Guidelines for Periodic Reports,* to describe measures taken:

> [T]o create an environment conducive to ensuring to the maximum extent possible the survival and development of the child, including physical, mental, spiritual, moral, psychological, and social development, in a manner compatible with human dignity, and to prepare the child for an individual life in a free society.[8]

The Committee, accordingly, recommends general measures of implementation of the CRC that go well beyond the legal sphere.[9]

Among other measures, the Committee has urged states parties to:

- "Provide adequate and systematic training and sensitization on children's rights for those who work with children (e.g. parliamentarians, judges, lawyers, law enforcement officials, health personnel, teachers, school and institution administrators and staff, social workers)"[10];

CRC. *General measures of implementation of the Convention on the Rights of the Child*, General Comment No. 5, U.N. Comm. on the Rts. of the Child, 34th sess., ¶ 18, U.N. Doc. CRC/GC/2003/5 (2003)[hereinafter General Comment No. 5].

7. CRC, *supra* note 2, arts. 3 (1), 19 (1) (emphasis added).
8. *General guidelines regarding the form and contents of periodic reports to be submitted by States Parties under article 44, paragraph 1(b), of the Convention*, U.N. Comm. on the Rts. of the Child, 13th sess., 343rd mtg., ¶ 40, U.N. Doc. CRC/C/58 (1996), *reprinted in* Rachel Hodgkin & Peter Newell, UNICEF, Implementation Handbook for the Convention on the Rights of the Child, Annex 3 (2002) [hereinafter *Reporting Guidelines*].
9. General Comment No. 5, *supra* note 6, ¶¶ 24–65.
10. *Concluding Observations: Romania, Considerations of Reports Submitted by States Parties under Article 44 of this Convention*, U.N. Comm. on the Rts. of the Child, 32nd sess., ¶ 18(a), U.N. Doc. CRC/C/15/Add.199 (2003) [hereinafter *Concluding Observations: Romania*].

- "Continue to develop methods to promote the Convention, in particular at the local level," and to support NGOs in this regard[11];

- "Apply [the general principles of the Convention] in planning and policy-making at every level, as well as in actions taken by social and health welfare and educational institutions, courts of law and administrative authorities"[12]; and

- Take measures "to address effectively discriminatory attitudes or prejudices"—beyond the legal measures already called for.[13]

Expressing concern that traditional attitudes still limit respect for the views of children, the Committee has recommended further that the state party:

- promote within the family, schools, institutions, as well as in judicial and administrative procedures, respect for the views of children and facilitate their participation in all matters affecting them;

- take immediate measures to challenge the prevailing culture of impunity for acts of police violence against children;

- take all appropriate measures, such as comprehensive public education campaigns, to prevent and combat negative societal attitudes towards different ethnic groups;

- assess the impact of budgetary allocations on the implementation of child rights; and

- prioritize and target social services for children belonging to the most vulnerable groups.[14]

Such recommendations, for measures that create a protective environment for children, should be received as prescriptions for the development community and the International Financial Institutions (IFIs).[15] Sadly, the Committee's observations on states parties' periodic reports have rarely

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11. *Id.* ¶ 18(b).
12. *Id.* ¶ 24(c).
13. *Id.* ¶ 26.
14. *See, e.g., id.* ¶¶ 31(a), 35(d); *Concluding Observations of the Committee on the Rights of the Child: Bhutan, Consideration of Reports Submitted by States parties under Article 44 of the Convention*, U.N. Comm. on the Rts. of the Child, 27th sess., ¶¶ 23(a), 29(a), 31(c), 33(a), U.N. Doc. CRC/C/15/Add.157 (2001) [hereinafter *Concluding Observations: Bhutan*].
15. International financial institutions such as the International Monetary Fund (IMF), the World Bank Group, and other multilateral institutions, provide financial, analytical, technical, and advisory services to the developing world in an effort to fight poverty and promote sustainable development.

been central to the design of development programs and multilateral and donor follow up of those observations remains sporadic.[16]

According to the official position of the United Nations and its member states, all programs of development cooperation, policies, and technical assistance should "further the realization of human rights."[17] In practice most UN actions and advocacy explicitly directed toward protection from violence, exploitation, and abuse are undertaken by bodies with precise human rights mandates, including the Office of the High Commissioner for Human Rights (OHCHR), the United Nations High Commissioner for Refugees, the International Labour Organization, and UNICEF.[18] These bodies, NGOs, and other international actors should move decisively beyond traditional approaches to child protection which center on law reform and on providing services to victims. Other UN bodies and IFIs should also give greater priority to the multisectoral support needed to protect children from violence, exploitation, and abuse.[19]

B. Prevention and Response to Violence, Exploitation, and Abuse in a Development Context

Campaigns for immunization, oral rehydration and impregnated bed nets remind us that much of the world's child mortality is preventable. Although acts of violence, exploitation, and abuse are not all intended to cause harm (indeed, some are carried out ostensibly with the intention to protect), they can result in childhood death, disability, and poor development.[20] They are

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16. This is also the pattern of country reports under other human rights reporting mechanisms, including the Human Rights Committee monitoring compliance with the International Covenant on Civil and Political Rights, *adopted* 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* 23 Mar. 1976) (ICCPR) and the Committee on Economic Social and Cultural Rights, performing the same function for the International Covenant on Economic, Social and Cultural Rights, *adopted* 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 (*entered into force* 3 Jan. 1976).

17. *UN Statement of Common Understanding on the human rights-based approach* (May 2003), *reprinted in* UNICEF, THE STATE OF THE WORLD'S CHILDREN 2004, Annex B, 91–93 (2003), *available at* www.unicef.org/publications/files/Eng_text.pdf [hereinafter WORLD'S CHILDREN 2004].

18. Broadly, UNHCR's mandate pertains to the rights of refugees, asylum seekers, and stateless persons; the ILO's mandate to labor, and UNICEF's mandate to children and women.

19. *See* discussion on "Action 2," *infra* § (IV)(B)(1). The World Bank also addresses the issue of Social Protection. *See* World Bank Group, Social Protection, *available at* www1. worldbank.org/sp.

20. *See, e.g.,* WHO REPORT ON VIOLENCE AND HEALTH, *supra* note 5, at 59–86.

also preventable, and preventive interventions therefore merit greater emphasis in international development and human rights work.

Small scale projects providing care and rehabilitation are a regular feature of child protection programs, notably for street children, orphans, and victims of trafficking and sexual exploitation. Child victims have a right to such services, which can be lifesaving and can help prevent the revictimization of children already in a heightened state of vulnerability to abuse.[21] The very existence of services for recovery and support can help raise public awareness, although they can also isolate and stigmatize victims. Such projects rarely exist at scale, remaining oriented to a limited number of—usually urban—children who have suffered "protection failure." They also tend to be relatively expensive and hard to sustain.

In other development contexts, the importance of preventive measures is a given. Providing rehabilitation for polio victims but no vaccination against the disease, or distributing oral rehydration salts without safer drinking water would be criticized as inefficient, ineffective, and not rights based (the CRC even calls on states to take appropriate measures to develop preventive health care).[22] Why then pursue limited, palliative approaches to child protection?

The concrete visible nature of such projects, which is often valued by donors, and the inspiring examples of individual rehabilitation that can be found there, that generate a sense of satisfaction at action being taken, can paradoxically deflect pressure for more structural and long term measures. The magnitude of continuing child protection failures indicates that, alone or in combination, legal and service delivery interventions fall short of adequately protecting children. Even a significant scaling up of law reform and of care and rehabilitation projects is unlikely to make a dent in the incidence of abuse. A human rights approach to programming suggests that a wider range of interventions must be considered, based on keeping *all* children safe from harm.

Moving from an approach that has been primarily palliative to one which is systemic and includes prevention poses huge challenges. Where violent, exploitative, or abusive practices are linked to traditions or belief systems, broaching change becomes a sensitive matter, touching on reli-

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21. There are endless examples of the permutations such multiple abuses can take, including children who run away from harsh domestic labor only to be detained for vagrancy and subjected to physical violence in jail; children who have been sexually abused within the family or community and are then stigmatized and forced into the sex industry; and children who have been orphaned and, not receiving alternative care by the state, seek their own survival through whatever employment they can find, routinely in the worst forms of child labor.

22. CRC, *supra* note 2, art. 24(2)(f).

gion, politics, cultural identity, and shame. Sex and violence, issues which permeate child protection, are frequently taboo for public, and even private, discussion. Drawing attention to protection failures may irritate governments, a concern to which development agencies and the IFIs can be exquisitely attuned. Revealing abuses may expose victims to fresh risk. Difficulties associated with protection related data collection and interpretation, discussed later in this article, make it hard to judge the impact of particular interventions, with consequences for learning useful lessons, bringing projects to scale, and satisfying pressures to show rapid results. These are also reasons donors, governments, and agencies may prefer projects with more limited and immediate results. Establishing a protective environment for children takes time, with results evident in the medium to long term. As a result, the task requires patience and commitment by partners.

Child protection has neither a vaccine nor a universal blueprint for interventions. Country by country, situation by situation, the systematic factors that enable violence, exploitation, and abuse against children to continue unchecked—policies, practices, and the absence of systems and institutions—have to be understood and addressed. This task is circumstance specific, and highly labor intensive.

A persistent impediment to global action on child protection remains the perception that child exploitation and abuse are largely peripheral to national development. Documentation to the contrary, such as the *World Report on Violence and Health*,[23] is starting to shed light on the impact such abuses have on sectors that traditionally provide an indicator of national development (in this case, public health). A full understanding is yet to emerge of the relationship between poor child protection and national development. Child marriage, for instance, leads girls to drop out of school as well as causing increased maternal and infant mortality. Violence and the threat of sexual abuse also causes girls generally and children specifically stigmatized for their sexual orientation to drop out of school. Child labor may be associated with increased morbidity rates. More positively, breastfeeding may contribute to reduced child abuse.[24]

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23.   WHO REPORT ON VIOLENCE AND HEALTH, *supra* note 5.
24.   *See* Population Council, Transitions to Adulthood, Married Adolescents/First-Time Parents: Child Marriage, *available at* www.popcouncil.org/ta/childmar.html; OWEN O'DONNELL ET AL., CHILD LABOUR AND HEALTH: EVIDENCE AND RESEARCH ISSUES 7, 28–30 (2002), *available at* www.ucw-project.org/resources/pdf/childlabour_health.pdf; Kajsa Alsing-Monemi, et al., *Violence Against Women Increases the Risk of Infant and Child Mortality: A Case-Referent Study in Nicaragua,* 18 WHO BULLETIN 10–16 (2003), *available at* www.scielosp.org/pdf/bwho/v81n1/v81n1a04.pdf; Breastfeeding.com, Advantages of Breastfeeding, *available at* www.breastfeeding.com/all_about/all_about_more.html.

Development agencies and the IFIs, addressing an agenda framed primarily by the Millennium Development Goals (MDGs), the UN Development Action Framework, and Poverty Reduction Strategy Papers (PRSP),[25] may miss the centrality of human rights to the MDGs.[26] The importance of human rights can and should be emphasized in development programs and advocated more powerfully by the United Nations, member states, and civil society organizations.[27]

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25. For example, Common Country Assessments and the United Nations Development Action Frameworks are meant to take a human rights based approach. *See generally* United Nations Development Programme (UNDP), Human Rights, *available at* www.undp.org/governance/humanrights.htm; UNDP, Poverty Reduction, *available at* www.undp.org/poverty. UN staff understanding of international human rights obligations remains limited. A recent World Vision study of the World Bank's reticence to help governments fulfil human rights obligations suggests:

     [A]n institution unwilling to broach the subject of rights, even in the case of children, the elderly or people with disabilities; . . . help is not even offered to governments to achieve specific national obligations under their economic, social and cultural commitments, no matter how closely related these were to those World Bank sectoral programmes reviewed. . . . By declining to proactively offer to help governments achieve their national rights obligations, the Bank may actually hinder the achievement of these. The Bank too often overlooks the reality that it is a central actor in the reform of those parts of government that would be expected to deliver on the rights instruments.

     Alan Whaites, *The World Bank––doing the rights thing?,* Global Future 8 (World Vision, Monrovia, C.A.), Fourth Quarter 2003, *available at* www.globalfutureonline.org/PolicyAdvocacy/GlblFutr.nsf/issues/DBFAAA769C172C1988256E8500240048/$File/GF03Q4_web.pdf?OpenElement.

26. Implementation of human rights instruments are to be taken into account in preparing the United Nations Common Country Assessments; in practice, greater attention is given to the Millennium Development Goals (MDGs). The MDGs include eradicating extreme poverty and hunger, achieving universal primary education, promoting gender equality, reducing child mortality, and combating HIV/AIDS. *See* United Nations, Millennium Development Goals, *available at* www.un.org/millenniumgoals. Nobel Laureate Shirin Ebadi proposed that the Millennium goals "be amended to include the promotion of humans rights," because democracy can be realized and development achieved only through human rights.

     "I wish that Secretary-General Kofi Annan could hear this," Malloch Brown [Administrator of UNDP] said, "because today he chided me and others for concentrating so much on the eight MDGs that we forget that they are part of the Millennium Declaration, which calls very strongly for democracy and human rights as the route to achieving the goals." *Iranian Nobel laureate Shirin Ebadi says human rights essential for Millennium goals,* Newsfront, 3 Jun. 2004, *available at* www.undp.org/dpa/frontpage archive/2004/june/3jun04.

27. In a workshop on rights based approaches, held by Save the Children Sweden, "one of the main criticisms was that development actors in general were seen to refrain from pressurising Governments about specific rights violations, for fear of risking their legitimacy and future programme activities." Save the Children Sweden, Workshop on Rights-Based Approaches 8 (2003), *available at* www.rb.se/NR/rdonlyres/D7D283C7-91E9-4B3D-97CB-60CA2E4EAA01/0/Workshoponrightbasedapproachesart2967.pdf.

C. Child Protection in Emergencies

It may seem futile to try to strengthen a protective environment in times of crisis. Conflicts and humanitarian emergencies amplify the risk of violence and exploitation for all children, through recruitment into armed groups; disability and death caused by combat, landmines, and unexploded ordnance; sexual and other abuse; torture; and trafficking. Domestic violence also increases with the stress on family, social structures, and resources, as well as at the hands of returned combatants. The difficulty of getting food, fuel, and water pushes women and girls into "survival sex." The vulnerability of some children increases manifold through being displaced, orphaned, or separated from their families. At the same time, the protective mechanisms of governance, policing, and accountability break down and basic social services become sporadic or cease to be provided altogether.

A range of mitigating interventions is traditional in humanitarian emergencies. Here, the focus of international efforts reverts to the rapid delivery of assistance, such as water and sanitation, immunization, and "schools-in-a-box." Providing services or material assistance, also referred to as "substitution,"[28] can reduce the vulnerability of men, women, and children, and can enable parents to offer greater protection and stability to their children. A school environment, however primitive, gives children a constructive focus for their energy. Even in an environment in which international sanctions are imposed, there is an obligation to minimize the impact of those measures on vulnerable groups, including children.[29]

Many other actions can be taken in support of child protection during a humanitarian emergency and in a transition when conflict ebbs. These include preventing family separations and reuniting children with their families; seeking the agreement of combatants to protect children (for example, by releasing child soldiers); setting up so called child friendly spaces where children and (usually) their mothers have access to basic services and relative safety; and monitoring and reporting human rights abuses. At the political level, provisions for child protection can be negotiated as part of peace agreements. Peacekeeping operations, too, can be equipped through the sensitization of troops, civilian police, and decision makers, with adequate punishment for those who abuse or exploit

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28. Hugo Slim and Luis Enrique Eguren, Active Learning Network for Accountability and Performance in Humanitarian Action, Humanitarian Protection: A Guidance Booklet (pilot version), 26 (2004), *available at* www.alnap.org/pubs/pdfs/protectionbooklet3.pdf.

29. General Comment No. 8 on the relationship between economic sanctions and respect for economic, social and cultural rights, *adopted* 12 Dec. 1997, U.N. Comm. on Econ., Soc. & Cult. Rts., 17th Sess., ¶ 10, U.N. Doc. E/C.12/1997/8 (1997).

children. These factors correspond to several of the factors making up the protective environment elements, if in attenuated form. Where a government exists and conflict is minimal, a more complete approach is possible.

III. BUILDING A PROTECTIVE ENVIRONMENT

The Protective Environment Framework sets out eight broad, pivotal elements that determine children's protection from violence, exploitation, and abuse. This approach does not detract from the responsibility of the state for child protection, but identifies the systems and capacities needed to support child protection at all levels—national, societal, and familial.[30] How protectively these elements function, and how they interact, differs from one society to another, and may vary in relation to different types of abuse. Programmatic, policy, and advocacy approaches need to be tailored accordingly. Conflict, poverty, natural disasters, and epidemics are also recognized as undermining the availability of protection.[31]

This framework approaches the prevention of violence and exploitation as both programmable and more consistent with a human rights based approach. Strengthening a protective environment for children requires many levels of engagement, which in turn demands dialogue, partnerships, and coordination based on a shared analysis. Many of its components correspond to traditional development activities and approaches, such as improving basic services, monitoring results, and recognizing individuals as

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30. The Committee on the Rights of the Child recognizes that responsibilities to respect and ensure the rights of children extend in practice beyond the state and state controlled services and institutions to include children, parents, and wider families, other adults, and nonstate services and organizations. General Comment No. 5, *supra* note 6, ¶ 56.

31. "In some wealthier countries, poverty does not appear to be the main cause of child prostitution." Inter-parliamentary Union/UNICEF, Child Protection: A Handbook for Parliamentarians 64 (2004), *available at* www.unicef.org/publications/files/Guide_Enfants_OK.pdf [hereinafter Child Protection Handbook]. Moreover, in some developing countries, social causes appear to be at least as important as economic ones. A report on Kenya by the UN Special Rapporteur on the sale of children, child prostitution, and child pornography notes:

  [S]pecialists working with children in the streets were of the opinion that poverty *per se* is not the only cause, although it certainly aggravates matters, but that abuse or rejection within families is the primary reason for the increase in street children and the consequent vulnerability to commercial sexual exploitation. The breakdown of traditional family values and the culture of African extended family were frequently cited as most compelling causes leading to a moral disintegration of society, again making children more vulnerable to sexual exploitation. Children escape physical and sexual abuse from home and from dysfunctional families affected by unemployment, substance abuse and criminality, and end up in the streets.

  Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Ms. Ofelia Calcetas-Santos, U.N. ESCOR, Comm'n on Hum. Rts., 54th Sess., Agenda Item 20, ¶ 11, U.N. Doc. E/CN.4/1998/101/Add.1 (1998).

actors in their own development. The factors that *prevent or contribute to protection* also lend themselves to measurement more readily than do the prevalence or incidence of many forms of violence, exploitation, and abuse.

The eight elements key to creating, or strengthening, a protective environment around children, described in greater detail below, are Government Commitment and Capacity[32]; Legislation and Enforcement[33]; Culture and Customs[34]; Open Discussion[35]; Children's Life Skills, Knowledge, and Participation[36]; Capacity of Families and Communities[37]; Essential Services[38]; and Monitoring, Reporting, and Oversight.[39]

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32. Protective Government Commitment and Capacity would include ratification of international conventions, without reservations; budgetary provisions for child protection; public declarations of commitment; explicitly "child friendly" policies; and support for public prosecutions.
33. Protective Legislation and Enforcement would include incorporation of relevant international standards; prosecution of violators; police and judiciary functioning without interference; accessible redress mechanisms; child friendly and confidential legal procedures; the availability of legal aid; no criminalization of victims; and a juvenile justice regime in place.
34. Protective Culture and Customs would include (among other illustrative examples) an environment in which women and girls face little discrimination; childcare practices do not involve corporal punishment; violence is not a key component of masculine identity; spouses are not required to have FGM/C or be underage; peaceful dispute resolution is valued; children are attributed with dignity; recourse to state institutions is common; harmful practices are not underpinned by religious beliefs; sexual exploitation of children is socially unacceptable; and children with disabilities or orphaned by AIDS are not stigmatized.
35. Open Discussion, including the engagement of civil society and media would require that harmful phenomena are recognized as such and are reported in the media; that protection failures are acknowledged at the community and national level; that young people are able to refer to such issues at home, at school, and with each other; that victims are not threatened or ostracized; and that NGOs and media are able to work with minimal interference.
36. Protective Children's Life Skills, Knowledge, and Participation, would include an environment in which children are aware that they have rights; are encouraged to form views and express them; are provided with necessary information; are taught problem solving and negotiating skills; have their self-esteem valued by adults; and are listened to within the family, school, and community.
37. Protective Capacity of Families and Communities would include parents and other caregivers observing protective childrearing practices; families supported for childcare needs; communities supporting and monitoring protection; and the existence of some demographic balance (no adult shortage).
38. Protective Essential Services would include (among illustrative examples) education that is free for all children, including refugees; nondiscriminatory provision of health care, including for sex workers and detainees; a functioning social welfare system, with social workers, shelters, and hotlines; trained teachers who are present and working; and safe and supportive classrooms.
39. Protective Monitoring, Reporting, and Oversight would include systematic collection of data, transparent reporting of data and review by policy makers; access by independent observers to children in traditionally marginalized groups; and encouragement of and respect for civic review.
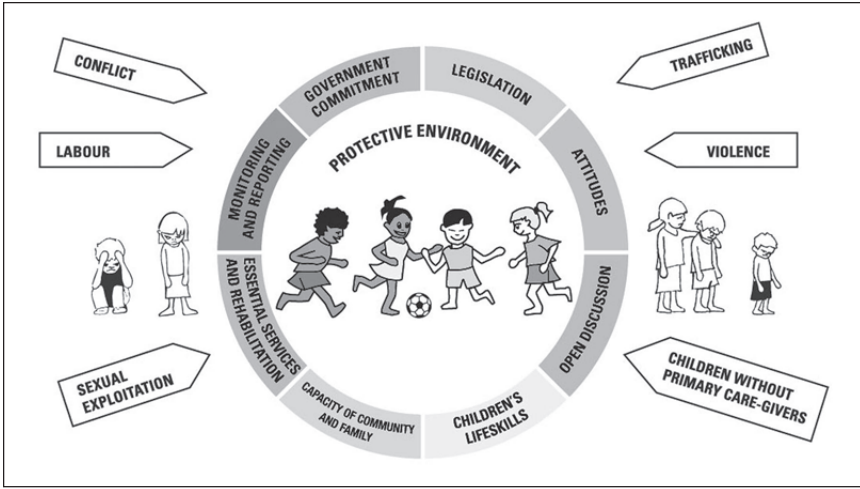
A. Government Commitment to, and Capacity for, Fulfilling Protection Rights

Bringing about improved protection and sustaining it requires both commitment and capacity on the part of the government. Ratification of international child protection standards is essential, and where lacking, interlocutors should seek it actively. Official acknowledgment of protection failures and publicly expressed intent to address them give these issues a place on the national agenda and pave the way toward a range of other protective elements, including the provision of necessary services and open discussion of the issues. Beyond securing ratification of international conventions and advocating that reservations be lifted, agencies, NGOs, and donors should persuade government counterparts to promote national budgets, policies and administrative practices, and structures conducive to better protection; to establish monitoring mechanisms; and to speak up on the issues at stake. A lack of government commitment will make it harder to address most other elements of a protective environment.

Protection abuses, or more precisely their public airing, can be felt as nationally humiliating and their official acknowledgment may be slow in coming. Years passed before the ravages of AIDS in some of the most heavily affected countries of Sub-Saharan Africa were acknowledged at the senior government level,[40] making it difficult, in turn, to lift the lid on

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40.   *See, e.g.,* Laurice Taitz, *AIDS now SA's top killer: New Findings contradict President Mbeki's denial that the epidemic is the leading cause of deaths in this country,* Sunday Times (Johannesburg), 16 Sept. 2001, at 23, *available at* www.suntimes.co.za/2001/09/

practices and public attitudes that contribute to the spread of the virus. Protection issues are unlikely to be addressed until they, and their contributing causes, are thus named.[41]

Such an acknowledgment and a stated commitment are only the beginning. States parties to the CRC are obliged to ensure that the authorities concerned have the resources they need to discharge the government's corrolating responsibilities. UNICEF has noted that national budget processes should be analyzed as part of a human rights based approach, as "the macroeconomic framework is fixed first, together with targets for growth or stabilization. When it comes to government spending, rights-fulfilling programs often do not have first claim on the available resources."[42]

The Committee has pointed out that states are not in a position to know whether or not they are fulfilling children's economic, social, and cultural rights unless they can identify the proportion of national and other budgets allocated to the social sector and, within that, to children.[43] The Committee proposes that states parties review the machinery of government from the perspective of implementing the CRC.[44]

In addition to adequate resources, effective implementation of the CRC also requires:

> [V]isible cross-sectoral coordination to recognise and realise children's rights across Government, between different levels of government and between Government and civil society—including in particular children and young people themselves. Invariably, many different government departments, and other governmental or quasi-departmental bodies affect children's lives and children's enjoyment of their rights. . . . If Government as a whole and at all levels is to promote and respect the rights of the child, it needs to work on the basis of a unifying, comprehensive and rights-based national strategy, rooted in the Convention. . . . To give the strategy authority, it will need to be endorsed at the highest level of government . . . [and] . . . to be linked to national

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16/news/news23.asp; Interview with Dr. Malegapuru William Makgoba, President of South African Medical Research Council, *NewsHour with Jim Lehrer* (PBS television broadcast, 12 Jul. 2000), *available at* www.pbs.org/newshour/bb/health/july-dec00/aids_safrica_7-12.html.

41. For example, it was only when sexual violence against women and girls during armed conflict, as well as in refugee and internal displacement settings, were singled out as a phenomenon that they attracted significant condemnation, resources, and programmatic and legal action. In a decade, the issue went from being treated as a tragic byproduct of conflict to being designated, in some circumstances, as a war crime. *See, e.g.*, Prosecutor v. Akayseu (Case No. ICTR 96-4-T), Judgement of Trial Chamber I, 2 Sept. 1998; Prosecutor v. Anto Furundzija (Case No. IT-95-17/1), Judgement of Trial Chamber II, 10 Dec. 1998.

42. WORLD'S CHILDREN 2004, *supra* note 17, at 77.

43. General Comment No. 5, *supra* note 6, ¶ 51.

44. *Id.* ¶ 38.

development planning and included in national budgeting; otherwise, the strategy may remain marginalized outside key decision-making processes.[45]

Government capacity, a traditional target of development assistance, is often weak when it comes to child protection. This weakness appears not only in terms of budgetary resources but also in terms of administrative support and structures, trained professionals with adequate remit and authority, and experience. Furthermore, the commitment of other governments is needed not only as donors but as advocates, giving prominence to child protection in multilateral fora such as with international development and financial institutions. International cooperation is also required to address cross border issues such as child trafficking.

B. Legislation and Enforcement

An adequate legislative framework, its consistent implementation, accountability, and redress mechanisms—in short, the rule of law—are indicators of government commitment and capacity, and an important element of a protective environment. Policies and administrative practices should be consistent with the law and subject to challenge and review in a transparent manner. For protection rights to be justiciable, domestic law should set out entitlements in sufficient detail to enable effective remedies.[46] This is rarely the reality.

The police and the judiciary are often unable to enforce the law due to poor training, a lack of basic equipment for communications and record keeping, and few systems for oversight. They are further hampered by the absence of appropriate social services to which children can be referred. Corruption is also a factor; the exploitation of children is lucrative, in profits, remittances, and bribes.[47] In practice, nonenforcement of the law is routine

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45. *Id.* ¶¶ 28, 29, 30.
46. *Id.* ¶ 26. The Committee promotes, but does not require, the incorporation of the Convention into domestic law. It has commended states' adoption of consolidated acts on the rights of the child.
47. World wide, migrant smuggling and trafficking is now worth between $12 billion (IOM estimate) and $30 billion (US sources). Migrants pay £1500 from Romania, £6–9000 from India to a top rate of £16,000 from China ($30,000 from China to the United States). The fee varies with the distance travelled, mode of transport and whether extra services are offered (for example, guarantees of repeated attempts until entry is secured, work on arrival). Cost for a well forged passport can be £2,000. Profits are approaching drug smuggling levels and with lower criminal penalties if caught, there are few disincentives.

     The United Kingdom Parliament, House of Commons, *Home Affairs, First Report,* Sess. 2000–2001, App. 1, ¶ 9.2 (23 Jan. 2001) *available at* www.publications.parliament. uk/pa/cm200001/cmselect/cmhaff/163/16305.htm.

across large parts of the globe with respect to sexual violence and other assaults against girls and women, with prosecution so rare that there is little incentive to surmount the intimidation and humiliation that accompany reporting such crimes.[48] The police may themselves be assailants, making them an object of fear by children and youth.

Competing legal systems present another barrier to law enforcement, with customary systems of justice existing alongside the official law of the land and prevailing at the community level, particularly with respect to family issues such as marriage and its dissolution, succession, inheritance, family honor, and the treatment of widows and orphans.[49] Local advocates—including NGOs, professional associations, and women's groups—can galvanize their efforts through greater awareness of internationally recognized standards and mechanisms, ultimately helping to strengthen local capacity.[50] Legislation passed in isolation from a national debate and broader engagement can push practices underground, as well as generating backlash.[51] A legal reform objective should be accompanied by broader awareness raising and advocacy efforts; indeed, the very goal of legislation can be to change attitudes, as was the case when Sweden banned all corporal punishment of children.[52] In 1965, 53 percent of Swedes thought corporal punishment indispensable to raising children; it was banned in 1979, and by 1996, only 11 percent of adults favored it.[53] Without such social momentum, legislation is likely to have little impact. This brings us to the importance of culture and customs.

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48. *See, e.g., The Girls Next Door, available at* www.nytimes.com/2004/01/25/magazine/ 25SEXTRAFFIC.html; www.cnn.com/2003/WORLD/americas/12/02/rights.mexico. murders.reut/index.html. Women and girls who have been raped may face "honor" killing, coerced prostitution, ongoing physical and mental abuse or ostracism, and the impossibility of marriage.

49. *See, e.g.,* UNICEF, Africa's Orphaned Generations 20 (2003), *available at* www.unicef.org/ publications/files/africas_orphans.pdf [hereinafter Africa's Orphaned Generations] (on property grabbing from widows).

50. *See generally* Ford Foundation, Many Roads to Justice: The Law-related Work of Ford Foundation Grantees Around the World (2000), *available at* www.fordfound.org/ publications/recent_articles/docs/manyroads.pdf.

51. For example, after Senegal passed a law abolishing female genital mutilation/cutting and establishing severe penalties for violators, one traditional cutter performed 120 operations in the space of a few days, and an influential religious leader declared the practice a religious obligation to be continued. On balance, Senegal's experience has been positive, as it includes a significant grassroots component. Peter Easton et al., *Social Policy from the Bottom Up: Abandoning FGC in Sub-Saharan Africa*, 13 Development in Practice 445, 450 (Nov. 2003).

52. Ministry of Health and Social Affairs, Ministry of Foreign Affairs, Ending Corporal Punishment: Swedish Experience to Prevent All Forms of Violence against Children—and the Results 14 (Jan. 2001).

53. *Id.*

C. Culture and Custom (Attitudes, Traditions, Behavior, and Practices)

In its preamble, the CRC recognizes "the importance of the traditions and values of each people for the protection and harmonious development of the child."[54] But many harmful practices are not only traditional but regarded as beneficial, and imposed by profoundly loving parents and communities. For example, putting more children behind bars is often regarded as a positive and constructive response to adolescent criminality, notwithstanding the fact that it may be accompanied by high rates of abuse and recidivism.[55] Violence, exploitation, and abuse may be tolerated or encouraged in the form of child marriage, sexual abuse in religious or quasi-religious contexts, sending children away from home to work, honor killings, and severe physical punishment. Customs such as FGM/C and child marriage perform social functions linked, among other things, to marriage-ability and control of female sexuality. The shaming and stigmatization of victims, which may be intended to uphold group values, can lead to their being deprived of protection from subsequent abuse.

The Convention on the Elimination of All forms of Discrimination against Women recognizes that abuses and exclusions affecting women and girls are part and parcel of the social structure, and makes it incumbent on states parties to take all appropriate measures:

> 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.[56]

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54. CRC, *supra* note 2, at pmbl.
55. *See, e.g.,* David Halbfinger, *Care of Juvenile Offenders in Mississippi is Faulted*, N.Y. TIMES, 1 Sept. 2003, at A13. *See generally*, DEFENCE FOR CHILDREN INTERNATIONAL, *supra* note 5; *A Stigma That Never Fades*, ECONOMIST, 8 Aug. 2002, *available at* www.economist.com/world/na/displayStory.cfm?story_id=1270755.

> In 1985 [in the United States], 70% of people on parole successfully completed their term; by 1999, only 42% did. Those who break their parole now account for a third of prison admissions, the fastest-growing category. Altogether, roughly two-thirds of released prisoners are re-arrested within three years of release; 40% are already back in prison in that time.

> *See also Fact Sheet*, Correctional Association of New York (July 2002), *available at* www.correctionalassociation.org/JJP_Juvenile_Detention_factsheet.htm) (regarding juvenile re-offenders in New York City). Furthermore, research has shown that in many cases alternatives to detention programs are far more effective in addressing the safety concerns of society, as well as the rehabilitation needs of an at risk population.

56. Convention on the Elimination of All Forms of Discrimination Against Women, *adopted* 18 Dec. 1979, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, pmbl., U.N. Doc. A/34/46 (1980) (*entered into force* 3 Sept. 1981), 1249 U.N.T.S. 13, *reprinted in* 19 I.L.M. 33 (1980).

Few human rights treaties are as explicit as this about the state's obligation to work on *changing behavioral patterns* prejudicial to rights.[57] One legal instrument aptly calls all such traditions, as they apply to girls and women, "harmful traditional practices."[58] The CRC simply calls on states parties to take "all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children," and says nothing about the need to change patterns of conduct.[59] The recommendations of the Committee do, however, underline the importance of modifying societal practices and patterns.[60]

For the right to child protection to be respected, abusive practices must lose their traditional protection. Such momentous change requires strong social consensus, and this is the single greatest challenge in establishing a protective environment. Program interventions have often sought to address traditions and practices, and extensive literature exists on behavioral change.[61] Particular difficulties attach to changing behaviors closely associated with cultural and religious values.[62] It is unrealistic, moreover, to expect widespread *individual* deviation from behavior that is socially

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57. Protocol to the African Charter on Human and Peoples' Rights, on the Rights of Women in Africa, CAB/LEG/66.6/Rev.1, *adopted* 11 Jul. 2003 and not yet in force, requires states parties to

    commit themselves to modify the social and cultural patterns of conduct of women and men through public education, information, education and communication strategies, with a view to achieving the elimination of harmful cultural and traditional practices.

    Id. art. 2, and calls for states to take measures including the creation of public awareness in all sectors of society, legal prohibition of the practices in question, provision of necessary support to victims of harmful practices through basic services such as health services, legal and judicial support, emotional and psychological counseling as well as vocational training to make them self supporting, and protection of women who are at risk of being subjected to harmful practices "or all other forms of violence, abuse and intolerance." *Id.* art. 5.

58. The Protocol to the African Charter on Human and Peoples' Rights, on the Rights of Women in Africa, defines harmful traditional practices as "all behaviour, attitudes and/or practices which negatively affect the fundamental rights of women and girls, such as their right to life, health, dignity, education and physical integrity." *Id.* art. 1(g). Other traditions identified by human rights treaty bodies as harmful practices have included scarring, tattooing, binding, and branding; dowry related killings; abandonment or neglect of children with birth defects; female infanticide; tests of virginity of future brides; forced feeding of young women and nutritional taboos for pregnant women; killing of children related to ritual sacrifices; gifting of virgin girls to temples, shrines or priests. CHILD PROTECTION HANDBOOK, *supra* note 31, at 91.

59. CRC, *supra* note 2, art. 24(3).

60. *See, e.g., Concluding Observations: Bhutan, supra* note 14, ¶ 31; *Concluding Observations: Romania, supra* note 10, ¶ 26.

61. *See* INVOLVING PEOPLE, EVOLVING BEHAVIOUR 1–39, 157–211 (N. McKee et al. eds., 2000) [hereinafter INVOLVING PEOPLE]. Agencies work with a range of strategies and partners to address attitudes and behaviors. Partners may include the media, schools, and religious leaders. Strategies may involve village meetings and child-to-child peer education.

62. *See id.* at 160, 184.

sanctioned[63]; however "most of our knowledge about successful intervention strategies and behaviour has focused on the individual level change."[64] Hard as it may be to gain social momentum for the abandonment of such behaviors, promising examples exist, including the proliferation in Senegal of public pledges by communities abandoning FGM/C.[65]

As with draconian legislation, attempts to impose change are likely to be resisted, and these initiatives can only succeed through movements, coalitions, and partnerships. Such efforts are linked to the existence of open discussion, in which children themselves should be involved, as long as they are not exposed to added risk as a result.

D. Open Discussion (Including the Engagement of Media and Civil Society)

Violence, exploitation, and abuse are often out of bounds for discussion at all levels—by the government, schools, the community, the media, and in the family. These taboos apply especially to sexual themes, and to matters within the family sphere. Referring to honor killings in Pakistan, one human rights advocate noted: "We have a culture of silence. People continue to suffer in silence. No one gets justice unless someone powerful intervenes."[66] Advocacy may be met with official denial and censorship.[67]

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63. BRIDGET ANDERSON & JULIA O'CONNELL DAVIDSON, IS TRAFFICKING IN HUMAN BEINGS DEMAND DRIVEN?: A MULTI-COUNTRY PILOT STUDY 41–42 (International Organization for Migration, IOM Migration Research Series, No. 15, 2003), *available at* www.iom.int/DOCUMENTS/ PUBLICATION/EN/mrs_15_2003.pdf (addressing the importance of prevailing social norms, largely determined by peer behavior and what people can get away with). "[I]n the final analysis, it will be peers who police the margins." *Id.* at 47.

64. INVOLVING PEOPLE, *supra* note 61, at 32.

65. *See* Gerry Mackie, *Female Genital Cutting: The Beginning of the End, in* FEMALE "CIRCUMCISION" IN AFRICA: CULTURE, CONTROVERSY, AND CHANGE 253 (Bettina Shell-Duncan & Ylva Hernlund eds., 2000). The author writes that foot binding in China came to a rapid end by 1911, less than twenty years after the founding of the first anti-footbinding society. *Id.* at 256. Tostan, an education program that started in Senegal, is organized like a "virtuous pyramid scheme," in which intermarrying communities decide jointly to abandon the process. *Id.* at 259. *See generally, id.* at 256–59.

66. Salman Masood, *Pakistani Inquiry Reveals Details of a Woman's "Honor Killing,"* N.Y. TIMES, 14 Dec. 2003, at 15 (quoting Rashid Rahman).

67. *See, e.g.,* HUMAN RIGHTS WATCH, WORLD REPORT 2002, at 228 (2003), *available at* www.hrw.org/wr2k2/pdf/india.pdf (for discussion of caste discrimination and Indian government actions at the World Conference Against Racism); Avert, HIV & Aids in China, *available at* www.avert.org/aidschina.htm. "In August 2001, the Chinese Government finally admitted that the country was facing a serious AIDS crisis. Previously the Government response had been one of suppression and denial." *See also Note submitted by Mr. Juan Miguel Petit, Special Rapporteur on the sale of children, child prostitution and child pornography, in accordance with Commission on Human*

Without open discussion, there is no climate for advocacy. Change is less likely on an issue that is never aired. Open discussion, signaling permission for children to talk about protection, will also help strengthen children's own ability to claim protection, another component of a protective environment.[68] Children have the right to receive information relevant to protection concerns. Under the CRC, states parties "shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well being and physical and mental health."[69]

The Committee has commended states parties that publish annual and comprehensive reports on the state of children's rights, noting that their publication, wide dissemination, and related debate, "including in parliament, can provide a focus for broad public engagement in implementation. Translations, including child friendly versions, are essential for engaging children and minority groups in the process."[70]

However, open discussion can place children at added risk, where revealing past abuses leads to the severe punishment, ostracism, and even death of the victim, notably in the case of rape. Children should not be compelled to speak about their experiences, but should do so only when it feels safe to them. "Safe spaces"—actual or virtual settings in which children can talk about, and seek respite and help from, violence, exploitation, and abuse that happens within the family or community—are an important component of child protection. Hotlines, shelters, and youth clubs can provide that space, and should be considered part of essential services for a protective environment. As an additional benefit, they offer a form of monitoring, opening a window onto major juvenile concerns. However, such facilities need funding and trained counselors and backup by appropriate health and social services.

Openness of discussion, media reporting, and civil society engagement often work in tandem. The media can be an effective monitor of social commitments. Reporting can, of course, be unhelpful to child protection where it sensationalizes abuses, fails to respect confidentiality, or uncritically reflects or reinforces unprotective practices.

Rights resolution 2002/92, U.N. ESCOR, Comm'n on Hum. Rts., 59th Sess., ¶ 13, U.N. Doc. E/CN.4/2003/79/Add.2 (2003).

The Special Rapporteur does not consider that child sexual abuse is any more prevalent in France than in other European countries. However, it appears that many individuals in a position of responsibility for the protection of children's rights, particularly within the judiciary, are still largely in denial about the existence and extent of this phenomenon.

68. Children and young people have proven to be excellent advocates and initiators of dialogue, particularly among their peers.
69. CRC, *supra* note 2, art. 17.
70. General Comment No. 5, *supra* note 6, ¶ 49.

Local NGOs are closer to communities, more aware of the sustainability of initiatives, and less expensive, and may be in a better position to judge how and when to initiate dialogue. The Committee has urged governments to develop formal and informal relationships with NGOs working on children's rights, including providing nondirective support.[71] International partners, in turn, need to take care that they do not place local partners at risk, and should be prepared to take the lead in advocacy.

E. Children's Life Skills, Knowledge, and Participation

Children are not supposed to bear the burden of defending themselves against protection abuses, nor are they obliged to claim, or secure, their rights for themselves. Nevertheless, they are agents of their own protection; awareness of their rights, and of ways to minimize the risks, can make them less vulnerable and more resourceful. Children's protective agency needs support to develop. Unfortunately, in many societies the appropriate time for much of this learning is in adolescence, when it is eclipsed by overnight transition to adulthood upon puberty or marriage.

Life skills programs aim to reinforce the individual's capacities "to think and behave in a pro-active and constructive way in dealing with themselves, relating to others, and succeeding in the wider society," all of which "are required both in everyday circumstances and, particularly, in specific risk situations."[72] These are skills of decision making, problem solving, and critical and creative thinking. They should not generally be conveyed in the abstract but centered on practical problems facing children on the streets, in the sex industry, or concerned with risks such as widespread HIV infection, for example.

Such programs, as with legislative or behavior change initiatives, benefit from community support; because life skills can equip children to present their views more effectively and without adult permission, "the use of life skills is, in itself, a risk-taking venture, because it potentially alters the individual's relationship with others, challenging their values, roles and power relations."[73]

Children have the right to be heard on all issues that affect them, often referred to as the "right of participation."[74] A right in and of itself,

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71.   *Id.* ¶ 59.
72.   Involving People, *supra* note 61, at 123; see model of interdependence of life skills, *id.* at 127.
73.   *Id.* at 135.
74.   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.

participation also helps ensure the fulfilment of other rights, including those regarding protection. From an early age, children need safe and protective channels for participation and self expression, including play and recreation. Inner city settings, armed conflict, and poverty make this particularly difficult. In addition, some customs inhibit play between parents and children.

The right to participation places an obligation on adults to listen to and take into account the views of children, which goes against the grain of many societies. School settings have particular potential to spearhead participatory and child centered methodology that allows adults and children to put this right into practice. Teachers may resist nontraditional teaching methods, feel threatened by an approach that diminishes their overt control of the classroom, or be embarrassed and unsure of how to respond to the issues adolescents bring to the fore. The Committee has thus called for measures that would prepare those around the child—parents, teachers, judges and others—for their obligation to consider the views of the child.[75]

F. Capacity of Families and Communities

A child's protection from violence, exploitation, and abuse is enhanced by an immediate social environment that is caring, supportive, and offers good role models—ideally, the family, as children have the right to be cared for by their parents or family.[76] The single most influential factor in a child's positive psychosocial development may be having at least one strong relationship with a caring adult.[77] States, for their part, are obliged in

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

CRC, *supra* note 2, art. 12. *See also* the Agenda for Action agreed at the First World Congress against Commercial Sexual Exploitation of Children, in Stockholm, Sweden in 1996, which recognizes the participation of children "so that they are able to express their views and to take action to prevent and protect children," and also the importance of identifying/establishing networks of children and young people "as advocates of child rights." World Congress against Commercial Sexual Exploitation of Children, Agenda for Action, art. 6, *available at* www.csecworldcongress.org/PDF/en/Stockholm/Outome_documents/Stockholm%20Declaration%201996_EN.pdf.

75.   *Reporting Guidelines*, *supra* note 8, ¶¶ 42–47. The provision of effective complaints mechanisms for children is regarded by the committee as part of the implementation of both Article 12, involving the right to participation, and Article 19, which concerns the child's protection from violence and abuse. *Id.* ¶¶ 44, 88.

76.   CRC, *supra* note 2, art. 7.

77.   Patrice L. Engle, et al., UNICEF, Care for Nutrition and Development 7 (30 Aug. 2000), *cited in* UNICEF, State of the World's Children 2003, at 20, n.16 (2002), *available at* www.unicef.org/publications/files/pub_sowc03_en.pdf.

guaranteeing and promoting the rights of the child to "render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities, and . . . ensure the development of institutions, facilities and services for the care of children."[78]

Children without parents, or whose parents do not or cannot protect them, have lost their first line of defense, and are acknowledged to be at heightened risk of abuse and exploitation. Orphans are especially vulnerable; in Sub-Saharan Africa they comprise an ever larger segment of the child sex industry, of school dropouts, and of children living on the street.[79] Passing an orphaned child into the care of the extended family can contribute to protection, but as with any family, does not guarantee it. Orphans remain vulnerable to harm at the hands of guardians, with sexual abuse and exploitation of their labor by members of the extended family not uncommon.[80]

Family care practices and rituals, both beneficial and harmful, are handed down through generations, from breastfeeding and play on the one hand, to FGM/C and corporal punishment on the other. Strengthening the protection capacity of families and communities includes reinforcing positive parenting practices, and encouraging the abandonment of harmful ones. A range of caregivers also needs to be able to recognize, prevent, and respond to indications of child abuse and neglect.

Children deprived of their family environment have a right to special protection and assistance, but too often this translates to placement in institutions, which are not, as a rule, beneficial to children's development and where the children face significant risk of abuse.[81] Placement in institutional care should be a last resort, with priority given instead to supporting the capacity of parents and the broader community to care for and protect children. Institutional placement can be a survival strategy for desperate parents; protective social and economic policies help attain "the

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78. CRC, *supra* note 2, art. 18 (2).

79. *See* Africa's Orphaned Generations, *supra* note 49, at 25. Sub-Saharan Africa has the highest rate of orphaning in the world: some 34 million children are without one or both parents, 11 million as the result of AIDS. *Id.* at 6, 9. In twelve African countries, at least 15 percent of all children under fifteen will be orphaned in 2010, on current projections. *Id.* at 11. In Rwanda, ravaged by both war and AIDS, 37 percent of households with children are taking care of orphans. *Id.* at 50.

80. *See* Human Rights Watch, Suffering in Silence: The Links Between Human Rights Abuses and HIV Transmission to Girls in Zambia 25–31 (2002), *available at* www.hrw.org/reports/2003/zambia/zambia1202.pdf (showing that orphans are vulnerable to sexual abuse by extended family, which contributes further to the spread of HIV/AIDS). *See also* Craig S. Smith, *School Pedophilia Scandal Shakes Portuguese Society*, Int'l Herald Trib., 9 Oct. 2003, at 3.

81. *See, e.g.*, Human Rights Watch, Abandoned to the State: Cruelty and Neglect in Russian Orphanages (1998), *available at* www.hrw.org/reports98/russia2. *See also* Ministry of Foreign Affairs, Sweden, Children in Institutions 17 (2001) [hereinafter Children in Institutions].

objective that families themselves should manage to support their own children, and therefore not need to place them in institutions."[82]

Child protection policies may not be known or implemented at district and community levels, and communities can be supported to learn about and assert, their rights. Community involvement in planning (around education, or protection problems such as trafficking or child labor for example) can help reveal protection gaps and generate responses that enjoy broad ownership.[83] In supporting such approaches, external actors will need to take care not to create situations of unnecessary dependency, which undermine existing coping capacities.

G. Essential Services: Basic and Targeted

Services, from basic health and education (where extra efforts are usually needed to reach children on the margins of society), to more specialized facilities for children at particular risk of or subjected to violence, exploitation, or abuse, can strengthen child protection. Their accessibility and adequacy should be scrutinized from this perspective. Basic services contribute to protection in a number of ways. Education is recognized as important in the elimination of child labor,[84] and women with higher levels of education appear less likely to be victims of intimate partner violence.[85] Immunization helps prevent disability, thereby also sparing many children from abuse, stigmatization, and institutionalization. Access to adequate water and shelter reduces women and girls' recourse to survival sex, especially among populations whose protection is already degraded, such as orphans, refugees, and displaced persons.

The Committee has suggested that resource allocation for basic social services has the greatest impact on the realization of child rights.[86] The way

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82. CHILDREN IN INSTITUTIONS, *supra* note 81, at 12.

83. See, *e.g.*, Jane Perlez, *Enlisting Aid to Education in the War on Terror*, N.Y. TIMES, 12 Oct. 2003, at 12.

84. ILO Convention No. 182, *supra* note 4, art. 7(2). Evaluation indicates that the cost, quality, relevance, and security of the schooling provided are directly relevant to its impact in countering child labor. UNICEF, EDUCATION AS A PREVENTIVE STRATEGY AGAINST CHILD LABOUR: EVALUATION OF THE CORNERSTONE PROGRAMME OF UNICEF'S GLOBAL CHILD LABOUR PROGRAMME 38 (2003), *available at* www.unicef.org/evaldatabase/files/Child_Labour_Evaluation_Report_27_Feb_2004.pdf.

85. Paula Sáez & Alejandro Cartes, *Domestic violence: Agression against women in Chile*, *in* WORLD VISION, VIOLENCE AGAINST WOMEN: FROM VISION TO EMPOWERMENT 17 (Don Brandt ed., 2003), *available at* www.justice-and-peace.org/PolicyAdvocacy/pahome2.5.nsf/0/AE901D40B6F02E8688256E46008361F3/$file/Women_empower.pdf.

86. *Report on the Twenty-Second Session*, Comm. on the Rts. of the Child, 22nd Sess., ¶ 291(o), U.N. Doc. CRC/C/90 (1999) [hereinafter *CRC Report on the 22nd Session*].

in which such services are delivered also has considerable bearing on their protective impact. Teachers and doctors, reflecting general prejudices, may work with girls, minorities, or street children in a way that reinforces biases about their low worth and dignity. Schools where children are safe and feel they have a say will develop their protective agency, including awareness of their rights. Otherwise, they face persistent hazards from corporal punishment, sexual abuse, and the physical environment.[87] There is evidence that safe schools, in which the educational content is relevant, protect children by making them less likely to engage in exploitative labor.[88] Children in the sex trade, orphaned by AIDS, or in detention have poor access to basic services; special efforts are needed for systems and services to reach them, and to reach others who are disadvantaged and discriminated against.

Entire sectors, such as health and justice, may simply not be "youth friendly," in that services are available but do not respond to children's needs. Detaining children together with adults is common, while few educational systems seek to recapture children who have dropped out by offering "second chance" education. Health services occasionally, but rarely, pick up on cases of child abuse and neglect, or publicize the public health costs and consequences of unprotective practices (such as child marriage and FGM/C).[89] Furthermore, child friendly redress mechanisms and court procedures are essential. South Africa, for example, has developed a Child Abuse Court, and has centralized within selected hospitals the appropriate medical, psychological, and criminal justice responses to sexual assaults.

Outside developed countries, persons who come into institutional contact with children are rarely thought to need specific training. However, all health workers, teachers, police, local authorities, community leaders, and caregivers whose work involves children need to be equipped with the skills, knowledge, authority, and motivation to identify and respond to actual or incipient child protection problems.[90] Even where training takes

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87.   *See generally* UNICEF, Education as a Preventive Strategy Against Child Labour: Evaluation of the Cornerstone Programme of UNICEF's Global Child Labour Programme (2003), *available at* www.unicef.org/evaldatabase/files/Child_Labour_Evaluation_Report_27_Feb_2004.pdf.

88.   *Id.* at 27–29, 204.

89.   WHO Report on Violence and Health, *supra* note 5, at 59–65, 156–57, 171–73.

90.   As an example of what is needed for health services to reach youth in the first place, United Nations Population Fund (UNFPA) has identified, among other things, the need for specially trained staff, stressing respect for young people including honoring their privacy and confidentiality, the availability of peer counselors, specially designated space or special times for youth, the involvement of youth in the design of such programs, service outreach and delivery of programs, drop in clients welcomed, and publicity, and recruitment that inform and reassure youth. UNPF, State of World Populations 2003, at 42 (2003), *available at* www.unfpa.org/upload/lib_pub_file/221_filename_swp2003_eng.pdf.

place, opportunities are being missed; in some countries, for example, teachers have been trained in early detection of disability but not in detecting signs of abuse.

Children have the right to more specialized services, as well. The CRC mandates services for the psychological recovery and social reintegration of child victims of neglect, exploitation, or abuse; torture or cruel, inhuman, or degrading treatment or punishment; or armed conflict.[91] The psychosocial needs, rehabilitation, and reintegration of child victims of protection abuses can be complex and long term. Interventions should properly strive to protect the child against recurrent abuse, which means that neither the removal of children from situations of exploitative labor, nor removal plus placement in some form of shelter, will necessarily be sufficient. A social welfare sector, adequately trained social workers, hotlines (where telephones are available), drop in centers, and advisory services for legal rights and reproductive health are examples of dedicated (and usually urban) capacity.

Denial of phenomena such as the child sex industry, domestic violence, and trafficking will tend to limit government supported services for victims, and also to curtail the ability of civil society organizations to step in. Conversely, organizations may be allowed and even encouraged to run showcase projects, without the necessary scaling up.

H. Monitoring, Reporting, and Oversight

This aspect of the protective environment encompasses different levels of formality, from the reporting obligations under international human rights commitments; to national methodologies for keeping track of child protection; to social vigilance: civic oversight through persuasion, exposure, or lobbying. The Committee has stated that "rigorous monitoring of implementation is required, which should be built into the process of government at all levels but also independent monitoring by national human rights institutions, NGOs and others."[92]

Monitoring in relation to child protection is universally weak, with few adequate systems in place. Data collection is poor, and even where the commitment and capacity exist, capturing child protection information can be extremely difficult.[93] Assessing and analyzing protection issues are fundamental to designing effective interventions. Where data can be

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91. CRC, *supra* note 2, art. 39.
92. General Comment No. 5, *supra* note 6, ¶ 27.
93. *See infra* § IV (A).

collected it should identify those under the age of eighteen, and be coordinated to ensure indicators that are applicable nationally.[94] Data, however partial, can also be persuasive in overcoming official denial of protection abuses. Conversely, a lack of official acknowledgment of abuses is likely to go hand-in-hand with reluctance to establish data gathering mechanisms.

Development assistance can help strengthen national monitoring and analysis capacity, including through material support (technology that allows more effective information gathering), human resources (trained personnel capable of gathering, collating, analyzing, and presenting information), and conceptual contributions (including development of indicators, research, monitoring methodologies, and consistent use of terms).[95]

Informal systems of invigilation have sprung up at community level; in Benin, 959 local community organizations monitor child trafficking, and other examples are found in Cambodia, Thailand, and Tanzania.[96] These have the advantage of being participatory and strengthening community capacity to protect. They are, however, less likely to provide national level data and analysis. All in all, methodologies to monitor child protection require considerable development.

IV. CHALLENGES FOR CHILD PROTECTION

A common platform for approaching child protection, such as the Protective Environment Framework, may help marshal projects and initiatives both within and across agencies. Significant challenges remain, however, among them the identification and use of appropriate indicators, and engaging less traditional protection partners, notably among development and international financial institutions, and the private sector.

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94. General Comment No. 5, *supra* note 6, ¶ 48.
95. A recent meeting on the MDGs noted that experience to date

   [P]oints to significant underlying problems with national statistical systems and with use of information. These include isolated, fragmented and parallel donor supported initiatives which do not translate into expanded country capacity; limited demand for statistics and for evidence-based decision-making and programming within governments; and systems that do not include all levels of information.

   Report of the Second Meeting of the MDG Support Group, Stockholm, Sweden (19–20 Feb. 2004), United Nations Development Programme 5 (2004) (on file with author).
96. Annual Report 2003, Benin Country Office, UNICEF (on file with author) and interview with UNICEF Regional Director, West and Central Africa, in Cotonou, Benin. UNICEF is currently conducting a desk review of community based child protection mechanisms.

A. Measuring Change in Child Protection

Development agencies habitually set goals and targets, and quantify outcomes. These numerators and denominators are used to assess the effectiveness of particular interventions. Donors, for their part, rightly insist on results based management. The biggest challenge this poses to child protection is the obligation to report, in the short term, on what are long term change processes.

In recent years, UNICEF has taken steps to improve and collate data on child labor, orphaning, disability, child soldiers, and FGM/C through its modular Multi-Indicator Cluster Survey.[97] For various reasons, however, it is difficult to find adequate, globally applicable indicators for protection issues such as sexual exploitation or domestic violence. The societal factors that keep protection abuses under wraps also make direct measurement difficult, as well as potentially dangerous for the children concerned. Survey methodology needs to accommodate such social taboos. Given the poor monitoring systems in place, any increase in recorded levels of abuse, for instance, may reflect more effective monitoring, while a low number of victims (of acid attacks against women and girls, for example) can fail to capture the pervasive societal impact of a particular form of violence.

In addition, standard data collection efforts may not capture the situation of marginalized children, the very children who tend to be invisible in general demographic or household surveys are those who are particularly vulnerable to exploitation and abuse. These include children in detention or in conflict with the law, girl children, the very poor, refugees and asylum seekers, stateless children, illegal immigrants, minority or out-caste children, children with disabilities, children in institutions, and children born out of wedlock.

It appears easier to measure the prevalence or incidence of practices that have widespread public and official acceptance, including FGM/C; child marriage; recourse to detention and institutionalization; and corporal punishment in the home and in school.[98] Some protection issues, while socially accepted, are nonetheless not readily revealed because they speak to an underlying crime or source of shame; honor killing is one example. Where direct measurement is problematic, as in the case of trafficking, sexual abuse, and child soldiers, seeking to quantify abused children may

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97. This is a collaboration underway between UNICEF and Futures Group International. *See generally* UNICEF, Multiple Indicator Cluster Surveys, Background, *available at* www.childinfo.org/MICS2/Gj99306m.htm.

98. Several of these practices will be included in the next UNICEF Multiple-Indicator Cluster Surveys in 2005. Child detention and institutionalization are not presumptively abusive, but signal heightened vulnerability and the need for oversight.

not be the best use of resources. Rather, indicators can be developed with an eye to the strategic intent of protection interventions.

Changes in the protective environment are measurable. Each element of the framework lends itself to the identification of a baseline with reference to the change being sought. So, for instance, rather than trying to establish how many children are being sexually abused, it may be practical to identify the factors contributing to inadequate protection against such abuse and design indicators accordingly. Such indicators might include whether perpetrators are ever brought to justice, whether there is widespread support for traditional practices, the extent to which policies and social services exist and respond to gaps in caregiving, or the degree to which the media makes reference to child sexual abuse. Targets can then be identified for progress against the baseline, with respect to adequate legal and policy measures, improved media coverage, or change in public acceptance of harmful practices. In the terminology of results based management, these are "outcome indicators." It is postulated that positive changes at this level will, in the longer term, contribute markedly to a decline in the incidence of abuse.

B. Cooperation to Achieve Greater Child Protection

1. Concerted Action Between the Human Rights and Development Community

As this article has illustrated, a protective environment is built on closely dovetailing elements. Government commitment and capacity will help determine whether investment is made in monitoring mechanisms and services, and the results of monitoring may provoke a decision to launch a public campaign, provide services to victims of abuse, or strengthen legislation. Legislation can itself educate public opinion, as can the media, whose coverage can both generate and respond to more open discussion. Open discussion can inform children of their rights and invigorate their thinking and actions to protect themselves and their peers. Programmatic initiatives support the capacities of families and communities to care for children, including through the strengthening of social welfare systems; promoting young peoples' participation and capabilities; and supporting government ownership of data/information collection mechanisms that identify "hidden" children, abuses, and gender and age differentials.

With all these strands forming part of a protective environment for children, actors from many different sectors are already heavily engaged. A conceptual framework for these efforts can help identify protection gaps, relevant strategies, and the actors best placed for particular actions. Beyond

this, however, there is a broader need for an enhanced human rights focus among UN actors, and for greater resources to be allocated to child protection. In late 2004, the United Nations launched "Action 2," a three year interagency plan of action to support the sustainability of national human rights protection systems through coordinated and strengthened UN support. The initiative is led by the OHCHR, the United Nations Development Group (UNDG), and the Executive Committee on Humanitarian Affairs (ECHA).[99] This effort may encourage development actors to join with the human rights community in seeking to hold governments accountable for their human rights obligations as part of their normal terms of engagement with governments. The results would be visible through greatly stepped up reference to the work of the treaty bodies, including advocacy on the "concluding observations" with authorities, nonstate entities, and the public; and support for state reporting mechanisms.

Among the anticipated outcomes of Action 2 is the increased reflection of human rights in country level development approaches supported by the international community, including Common Country Assessments, reporting on the MDGs, and PRSP processes.[100] For human rights principles and related specific outcomes to be given more prominence in such processes, strong advocates must be seated at the tables where these issues are decided. It is incumbent on the United Nations itself to communicate the importance of protection to good development outcomes and place it on the agendas of finance ministers, planners, donors, and IFIs. Human rights experts and practitioners, in promoting general measures of implementation, should also use the language and the practical tools of development programming—indicators, goal setting, results based management, and community based approaches.

Giving traction to international standards requires considerable time and money. Changes in the collective ethos to demand better child protection, and institutions that support this, may require a generation or more. The discipline of child protection is in its infancy; the analyses,

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99. *UN Launches Fresh Approach to try to Bolster Human Rights Protections in Countries*, UN News Service, 27 Oct. 2004, *available at* www.un.org/apps/news/story.asp?NewsID= 12366&Cr=human&Cr1=rights. The project will focus on such aspects of national human rights protection as legislation, the judiciary, recourse mechanisms, accountable government institutions, democratic and participatory decision making processes, and strong civil society, including a free and independent media. The protection of vulnerable and marginalized groups is also underlined. *See generally Strengthening the United Nations: An agenda for further change*, U.N. GAOR, 57th Sess., Agenda Item 53, ¶¶ 50–51 , U.N. Doc. A/57/387 (2002).

100. *Strengthening human rights-related United Nations action at country level: National human rights promotion and protection systems, Plan of Action* (18 Sept. 2003), ¶¶ 14–15, *available at* www2.undg.org/documents/3021-Strengthening_human_rights-related_United_Nations_action_at_country_level_-_Plan_of_Action.doc.

appropriate indicators, impact assessments, research, engagement with national policy, and protection strategies and methodologies need to be developed, institutionally retained, and disseminated, to encourage a shared approach by practitioners.

There is work ongoing to cost some aspects of child protection, such as the price of protecting and caring for children orphaned by AIDS in Sub-Saharan Africa. It should be possible to do the same, however roughly, for other child protection strategies. The need to better understand protection costs, lacking major supply components, suggests an area for collaboration between economists, human rights advocates, and policy makers. Acknowledging the long term nature of building a protective environment for children, and the investment this requires, may also contribute conceptually to the shift away from small scale, charitable, and largely palliative approaches to child protection.

2. The Private Sector

The extent to which the private sector contributes to or undermines respect for human rights is the subject of a growing body of literature. In August 2003, *Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises*[101] were developed by the United Nations. These include an obligation "to promote, secure the fulfilment of, respect, ensure respect of and protect human rights, including the rights of vulnerable groups" and refer specifically to the economic exploitation of children.[102]

However, comparatively few governments appear to have the resources or the inclination to step up oversight of human rights implications of corporate activity. Where services are privatized, the Committee has recommended that the government retain clear responsibility and capacity for ensuring respect for its obligations under the CRC.[103] As for unilateral corporate efforts towards social responsibility, the most trenchant criticism suggests that companies codes of conduct are inadequately monitored or

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101. Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, ESCOR, Comm'n on Hum. Rts., 55th Sess., Agenda Item 4, ¶ 1, U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003). The Norms were approved by Sub-Comm'n on the Promotion and Protection of Hum. Rts. Res. 2003/16, U.N. ESCOR, 22d mtg., U.N. Doc. E/CN.4/Sub.2/2003/L.11 at 53 (2003).

102. *Id.* ¶ 6. *See also* UNITED NATIONS, THE GLOBAL COMPACT: CORPORATE CITIZENSHIP IN THE WORLD ECONOMY, *available at* www.unglobalcompact.org/irj/servlet/prt/portal/prtroot/com. sapportals.km.docs/ungc_html_content/AboutTheGC/EssentialReadings/GC%20 brochure_master.pdf; *Guidelines for Multinational Enterprises,* Organisation for Economic Co-Operation and Development, *available at* www.oecd.org/dataoecd/56/36/ 1922428.pdf.

103. *CRC Report on the 22nd Session, supra* note 86, ¶ 291 (v).

enforced and aimed principally at persuading external critics of the company's sincerity.

This engagement by the private sector, however shallow in parts, must still be considered a positive trend, one that has raised public expectations and vigilance. Allegations of private sector abuses that have generated public outcry in recent years include child agricultural labor in West African cocoa production, children exploited in the export industries of carpets and garments in South Asia, dedicated travel agencies bringing clients to Southeast Asia in order to have sex with children, and infants trafficked for adoption from Latin America and Asia.[104]

Development and human rights agencies maintain a dialogue with the private sector. Fundraising is part of that dialogue, and the advocacy element has generally remained cautious. Several examples exist, however, of protection oriented individual or collective initiatives involving the private sector, including the World Tourism Organisation's Code of Conduct, IKEA's child labor policy, and Rugmark.[105] The Sub-Commission's call for the United Nations to monitor business compliance with human rights provisions may catalyze both attitudes and action.[106]

V. CONCLUSION

The aim of deconstructing child protection through the Protective Environment Framework is to put more development muscle behind the implementation of these human rights standards. The gap between dedication to child protection standards—in the CRC, its Optional Protocols, and several other instruments—and the experience of violence, exploitation, and abuse by hundreds of millions of children is unconscionable. Future protection

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104. *See, e.g.,* Press Release, National Consumers League, NCL to U.S. Retailers: Stop Ignoring Child Slaves in Carpet Industry (26 Mar. 2001), *available at* http://www.nclnet.org/childpr3.26.01.html (calling on US retailers to "stop supporting child slavery in the carpet industry"); Malcolm Macalister Hall, *Global industry fed by child-traffickers*, Telegraph (U.K.) 13 Sept. 2003, *available at* www.ecpat.org.uk/Global%20industry%20press.htm (on child sex tourism).

105. *See Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism*, End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes' (ECPAT) (2002), *available at* www.thecode.org/index.php?page=2_1; www.ikea-usa.com/ms/en_US/about_ikea/social_environmental/the_ikea_way.html; *Social Clauses—Here to Stay*, Rahul Rao, Global Policy Forum (Dec. 1999) (discussion of social labeling, including Rugmark), *available at* www.globalpolicy.org/socecon/labor/soclrao3.htm.

106. Mallen Baker, *Raising the Heat on Business over Human Rights*, Business Respect, Iss. No. 61 (17 Aug. 2003), *available at* www.mallenbaker.net/csr/CSRfiles/page.php?Story_ID=1038.

failures such as these will not be addressed productively through primarily targeting services towards vulnerable children or through legal reforms, important though these elements remain. Rather, if we are to secure children's safety from these forms of harm—to delay, for example, the projected marriages of 100 million female children in the next decade[107]— development actors, human rights advocates, and bodies that carry political and economic sway need to make child protection an active common cause.

The Protective Environment Framework identifies the principal components in any society of keeping children safer from violence, exploitation, and abuse. The components interact in important and rather obvious ways, and one element without others to support it—ratification of international instruments without national legislation or enforcement, or legislation without any steps to address socially accepted harmful practices, or steps to engage children and adolescents in their own protection on issues that remain taboo for discussion, for example—will be insufficient. The elements can be understood as a web of protection. Their simple exposition here, as Government Commitment and Capacity; Legislation and Enforcement; Culture and Customs; Open Discussion; Children's Life Skills; the Capacity of Families and Communities; Essential Services; and Monitoring and Oversight, should not suggest that protection in practice is anything other than complicated, intricate, expensive, and time consuming. Emergencies pose particular challenges for child protection, and reduce the prospects for investing in systemic change, although some possibilities nonetheless exist, and the importance of child protection should be borne in mind in post conflict and transitional situations.

The sheer numbers of children exposed to violence, exploitation, and abuse should make clear that these are not minor or isolated instances of children falling through the cracks. Rather, the web of factors that would keep them safe scarcely exists. Funding needs to be channeled into high quality evaluations of child protection interventions, and into building a solid base of knowledge that allows comparison of strategies across countries and regions. The recent elaboration of some global child protection indicators, the launch of Action 2, the World Bank's social protection activities, and the proliferation of codes of conduct in the private sector may pave the way for a higher profile for protection rights, and more convergent actions at country level.

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107.   Population Council, *supra* note 24.