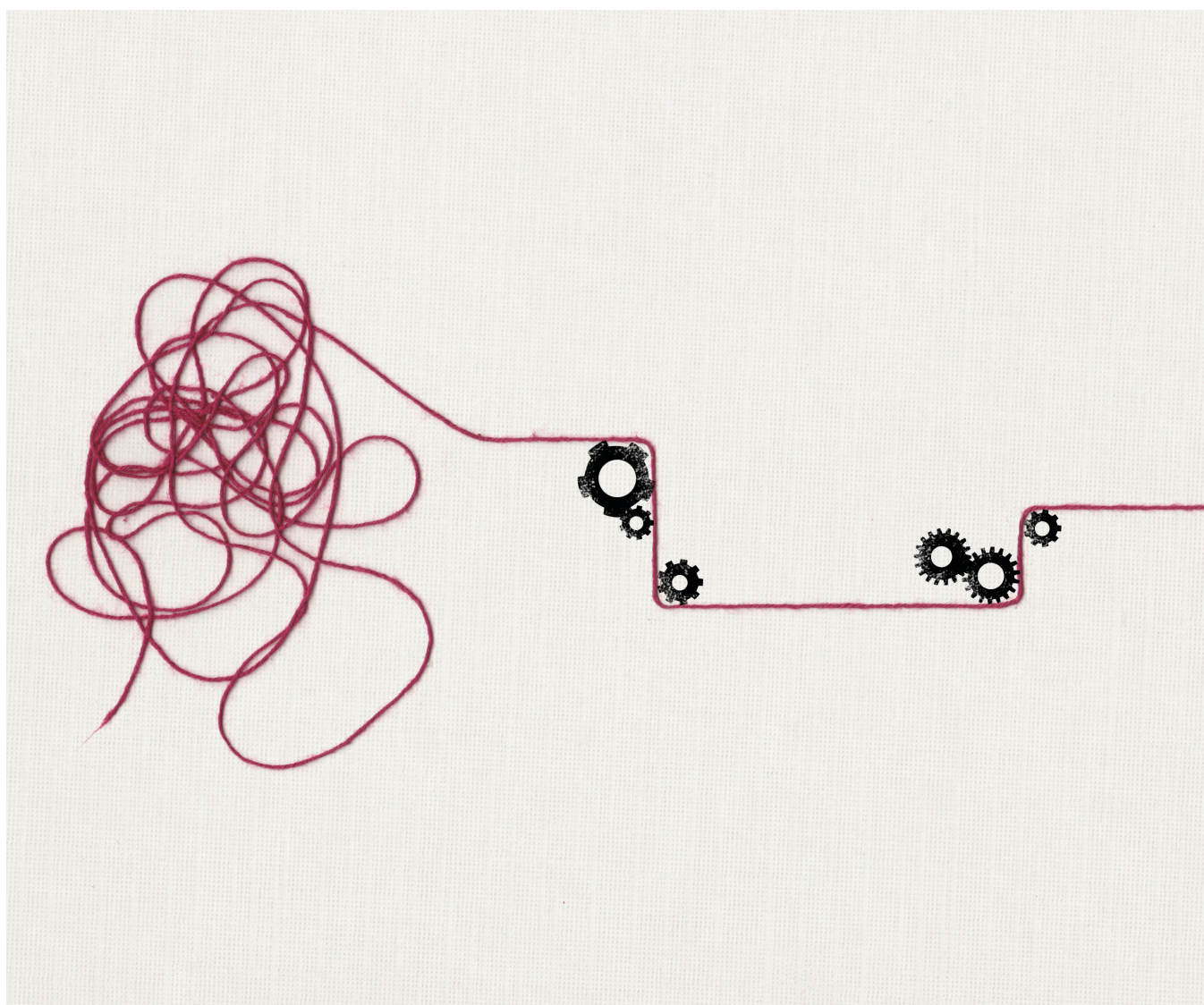


CHILDREN'S RIGHTS AND THE UN HUMAN RIGHTS COMMITTEE – AN ANALYSIS



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CONTENTS

Introduction

Methodology

An analysis of children's rights in the work of the Human Rights Committee

- Article 1 - Right to self determination
- Article 2 - Enjoyment for all and access to remedies
- Article 3 - Gender and equality
- Article 5 - The rights under the ICCPR must not be abused
by any group, individual or the State
- Article 6 - Right to life
- Article 7 - Freedom from torture
- Article 8 - Freedom from slavery and servitude
- Article 9 - Liberty and security of persons
- Article 10 - Right of detained persons to humane treatment
- Article 12 - Right to liberty and freedom of movement
- Article 13 - Right not to be arbitrarily expelled from a country
- Article 14 - Right to a fair trial
- Article 16 - Right to recognition as a person before the law
- Article 17 - Right to privacy
- Article 18 - Freedom of thought, conscience and religion
- Article 19 - Freedom of expression and opinion
- Article 21 and 22 - Right to peaceful assembly and freedom
of association
- Article 23 - The family and the right to marry
- Article 24 - Protection of the rights of the child
- Article 25 - Right to participation in public life
- Article 26 - Equality before the law
- Article 27 - Rights of minorities

Key findings and recommendations

Annex 1: An interpretation of children's rights in the Covenant

Annex 2: Children's rights in the concluding observations of the Committee

PART I

INTRODUCTION

All human rights apply to children, including civil and political rights. But despite the recognition 25 years ago of a set of rights specifically shaped for children in the Convention on the Rights of the Child (CRC), children are rarely deemed worthy or responsible enough to enjoy civil and political rights. Children can still be sentenced to death in 16 countries,¹ to life imprisonment in 73 countries² and to corporal punishment in over 40 countries.³ In too many places, corporal punishment of children is still legal in the home and used as a form of 'discipline' - an act that would in most places be treated as a criminal offence if committed against an adult. And children's ability to enforce their rights and challenge violations is largely neglected or ignored.

While civil and political rights are recognised specifically for children in the CRC, the review by the Human Rights Committee (the Committee) of State obligations under the International Covenant on Civil and Political Rights (ICCPR) provides a strong platform to further elaborate these rights. Indeed, given the mandate of the Committee to clarify and interpret the content of civil and political rights, this treaty body offers a complementary and essential perspective on the scope and meaning of those rights for certain categories of individuals, particularly children.

In this context, in 2011, CRIN launched the Children's Rights Wiki (the Wiki), an online tool which brings together all information about children's rights country by country, as part of our efforts to draw attention to all violations of children's rights globally. The Wiki includes extracts of recommendations issued by UN human rights mechanisms, such as UN special procedures⁴ and treaty bodies, including the Human Rights Committee, to highlight violations of children's rights.

The aim is to draw a clear picture of persistent violations of children's rights in a given country, as raised by the UN human rights mechanisms, with the eventual goal of matching them with avenues of redress. Equally, the extracts reveal gaps in reporting on certain violations of children's rights by civil society.

This analysis of children's rights in the concluding observations and general comments of the Committee looks at how the Covenant is interpreted for children by the Committee, focusing on the most frequently raised violations as well as those that are rarely - if ever - addressed.

The aim is twofold: we hope to encourage the Committee to address all children's rights, and to help advocates strengthen their reporting on children's rights issues.

The analysis is evolving, rather than comprehensive, and is meant as a starting point for others to take on. We welcome comments at info@crin.org

¹ Brunei Darussalam, Egypt, India (Jammu and Kashmir), the Islamic Republic of Iran, the Lao People's Democratic Republic, Malaysia, the Maldives, Mauritania, Nigeria, Pakistan, Qatar, Saudi Arabia, Somalia, Tonga, the United Arab Emirates and Yemen.

² See CRIN, INHUMAN SENTENCING: Life imprisonment of children around the world, available at: <https://www.crin.org/en/library/publications/inhuman-sentencing-life-imprisonment-children-around-world>

³ See CRIN, CAMPAIGNS: Inhuman sentencing of children, available at: <https://www.crin.org/en/home/campaigns/inhuman-sentencing/problem>

⁴ See CRIN, Guide to UN and International Human Rights System, available at: <https://www.crin.org/en/guides/un-and-international-human-rights-system>

PART II

METHODOLOGY

The following analysis stems from a thorough study of all references to children's rights made by the Committee, through its concluding observations and general comments. It is based on an interpretation of how each right recognised by the Covenant applies to children.

Through the Wiki, we were able to gather extracts of all children's rights recommendations made by the Committee to all States parties to the Covenant. We also conducted research into the Committee's general comments, and how they address children's rights.

As a next step, we clustered all extracts of the concluding observations for each country under the relevant articles of the Covenant (see annex 2). This allowed us to see gaps in how recommendations cover children's rights.

While analysing the results, we took into account that apparent gaps in the review of States' compliance with certain rights are not always linked to a failure to highlight violations of these rights for children. Instead they may be linked to other factors such as the lack of available data on the issue for children, or even that the issue doesn't affect children in a particular way.

PART III

ANALYSIS

An analysis of children's rights in the work of the Human Rights Committee

The Committee holds three sessions a year during which it reviews State party reports, examines individual complaints with regard to alleged violations of the Covenant by States parties and adopts general comments on thematic issues.

The Committee has adopted 35 general comments relating to the Covenant and, while they are all relevant to children, certain general comments have particular significance. As stated by the Committee in its General Comment 17 on article 24 of the Covenant, all rights in the Covenant apply to children and some afford minors greater rights than adults. It is on this basis that we analysed the general comments and concluding observations of the Committee.

Article 1 - self-determination

1. *All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*
2. *All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.*
3. *The States parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.*

General Comment 12 and recommendations issued to States on the right to self-determination make no explicit reference to children.

Article 1 of the Covenant recognises that *all* people have the right to self-determination.

In General Comment 12 the Committee recognises that the realisation of the right to self – determination “is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights”.

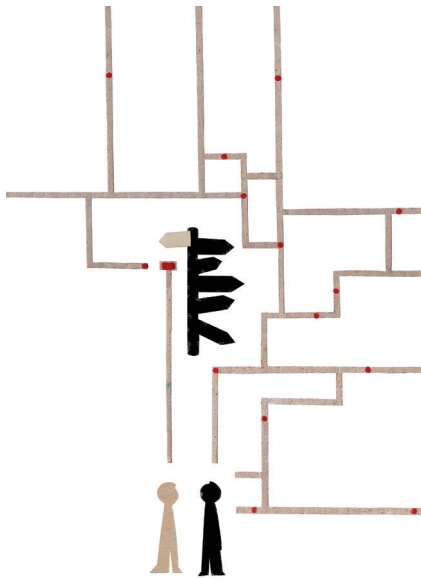
Children's autonomy and freedom to pursue their own development is a prerequisite for the realisation of other key rights including freedom of expression and freedom of association. Whilst there are circumstances in which young children's best interests might be negatively affected by respecting a child's right to self-determination, say for example in refusing a blood transfusion on religious or moral grounds, the right to self-determination is often breached in the name of ‘what's best for children’.

In regards to article 1 paragraph 2 of the Covenant, indigenous peoples often experience various forms of exclusion or marginalisation through the denial of their land rights – for example, dispossession and forced removal, having a devastating impact on their communities, and children are among the first to feel the effects.

Agricultural programmes (including the cultivation of illegal crops), oil exploration, forestry and logging activities, mining (including diamond mining), tourism and construction programmes for roads, dams and other developments, pose serious threats to indigenous peoples' survival and development. These cause displacement from traditional areas, introduce pollution into ecosystems and threaten the cultural diversity upon which indigenous communities rely. In Kenya for example, it is reported that poverty and deforestation (which has also meant the disappearance of plants and trees used for traditional medicine) have contributed to a life expectancy for Ogiek people of only 46 years. Five out of ten Ogiek children die before the age of five.

The significance of land is not restricted to indigenous peoples who continue to inhabit their place of origin. For those who have been forced off their land or who have moved, often to urban areas or shanty towns, for economic reasons, to escape armed conflict or to pursue education, the spiritual homeland continues to possess deep cultural resonance.⁵

5 UNICEF Innocenti Research Centre, Ensuring the Rights of Indigenous Children, Innocenti digest No. 11, available at: <http://www.unicef-irc.org/publications/pdf/digest11e.pdf>.



Article 2 - enjoyment for all and access to remedies

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:
 - (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
 - (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
 - (c) To ensure that the competent authorities shall enforce such remedies when granted.

General Comment 18

General Comment 18 elaborates on article 2 of the Covenant. In paragraph 5, the Committee emphasises that, in relation to children, article 24 provides that “all children, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, have the right to such measures of protection as are required by their status as minors, on the part of their family, society and the State”.

However, in paragraph 8, the Committee notes that the enjoyment of rights on an equal footing does “not mean identical treatment in every instance”. For example, article 6, paragraph 5, prohibits the death sentence from being imposed on persons below 18 years of age and article 10, paragraph 3, requires the segregation of juvenile offenders from adults. The Committee also notes that differential treatment will not constitute discrimination if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant (para. 13).

Article 2 of the Covenant also imposes an obligation on States parties to “adopt legislative or other measures” to give effect to the Covenant and to provide effective domestic remedies for persons whose rights are violated. There is no mention of discrimination on the basis of age in this general comment. Age discrimination affects children in many areas, however, for example, they may not have access to courts and complaints mechanisms on an equal basis with adults.

Concluding observations

Most concluding observations around children’s rights focus on issues relating to impunity for perpetrators of acts of violence and harmful traditional practices such as early marriage, female genital mutilation (FGM), domestic abuse, sexual abuse and trafficking. Other recommendations focus on discrimination against different groups like children with disabilities,⁶ minorities and religious groups, as well as the right to a nationality.

Only one recommendation mentions access to remedies for violations of civil rights - Turkey (2012, CCPR/C/TUR/CO/1): cases in which children are charged under the Anti-Terrorism Law for the free expression of their opinions and ideas, in particular in the context of non-violent discussions of the Kurdish issue.

⁶ See for example Bulgaria, 2011, CCPR/C/BGR/CO/3.

Spain,⁷ Belize,⁸ Tajikistan⁹ and Argentina¹⁰ are the only States the Committee has urged to give children access to legal representation.

States should make sure that all measures taken consider children's specific needs and ensure they are neither excluded from accessing remedies nor discriminated against by national laws and policies.

Access to remedies for children in general has never been mentioned as an issue to any State despite the fact that in many countries the law fails to allow children to challenge violations and enforce their rights.

In **Tanzania**, for example, no government-funded legal aid system exists, except in cases of murder and treason.¹¹

Belarus' laws mandate that only children aged 14 and above may, through their legal representative, initiate court proceedings to defend their rights and interests and that actions defending the rights of children under that age may only be brought on the child's behalf by a parent or guardian.¹²

In **Sri Lanka**, where civil action must be brought on behalf of children by a "next friend", that next friend is required to cover all court costs as if they were the plaintiff. As there is no legal provision allowing the court discretion to waive court costs in certain cases concerning the rights of the child, this could discourage adults from helping children litigate their rights by serving as their "next friend".¹³

Both **Morocco**¹⁴ and **Algeria's**¹⁵ laws require children who wish to bring a court case to obtain the consent of their "tutor", which is defined in law as their father only. And in both countries, there is no national human rights institution or Ombudsperson competent to receive and act upon complaints of violations of children's rights.

Article 3 - gender and equality

The States parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

General Comment 28

In paragraph 22, the Committee states that legal measures should restrict the publication and dissemination of obscene and pornographic material which portrays women and girls as objects of violence or degrading or inhuman treatment.

Paragraph 23 refers to the issue of forced marriage, emphasising that States must protect the right to enter into marriage only with free and full consent. Relatedly, it states that the minimum age for marriage should be set equally for men and women, and that it should "ensure women's capacity to make an informed and uncoerced decision". The Committee also notes that in some States a guardian, who is generally male, consents to the marriage instead of the woman herself, preventing the exercise of a free choice.

Paragraph 25 outlines States' responsibility to ensure that the matrimonial regime contains equal rights for both spouses regarding child custody, their religious and moral education, and the capacity to transmit to children both parents' nationality, and the ownership or administration of property. The need to maintain contact between children and the non-custodial parent on divorce or dissolution of marriage should also be based on equal considerations (para.26).

The various forms of family should be accepted by States, according to the Committee (para.27), including unmarried couples and their children and single parents and their children.

Finally, in paragraph 28, the Committee draws attention to States' obligation to protect boys and girls equally (article 24). Moreover, States should "report on measures taken to ensure that girls are treated equally to boys in education, in feeding and in health care, and provide the Committee with disaggregated data in this respect", and "States should eradicate, both through legislation and any other appropriate measures, all cultural or religious practices which jeopardise the freedom and well-being of female children".

Concluding observations

The Committee has urged action from States on a broad range of issues related to discrimination against girls including the lack of health services for adolescents leading to high levels of adolescent pregnancies, FGM, early and forced marriage, gender based violence, harassment, trafficking of girls, discrimination against girls in schools and the treatment of girls who serve as domestic workers.

7 See Spain, 2008, CCPR/C/ESP/CO/5.

8 See Belize, 2013, CCPR/C/BLZ/CO/1.

9 See Tajikistan, 2013, CCPR/C/TJK/CO/2.

10 See Argentina, 2010, CCPR/C/ARG/4.

11 See CRIN, Tanzania: Access to Justice for Children, May 2014, available at: <https://www.crin.org/en/library/publications/tanzania-access-justice-children>

12 See CRIN, Belarus: Access to Justice for Children, August 2014, available at: <https://www.crin.org/en/library/publications/belarus-access-justice-children>

13 See CRIN, Sri Lanka: Access to Justice for Children, April 2014, available at: <https://www.crin.org/en/library/publications/sri-lanka-access-justice-children>

14 See CRIN, Morocco: Access to Justice for Children, July 2014, available at: <https://www.crin.org/en/library/publications/morocco-access-justice-children>

15 See CRIN, Algeria: Access to Justice for Children, March 2014, available at: <https://www.crin.org/en/library/publications/algeria-access-justice-children>

However, the Committee has scarcely referred to the gender discrimination to which boys are subject.

Boys can be sent to work at a young age and are more likely to be recruited by armed groups. In some societies violent and promiscuous behaviour is seen as a sign of masculinity. Teenage boys who do not demonstrate this behaviour can be vulnerable to discrimination.

According to a report¹⁶ by the Overseas Development Institute on gender and immunisation, in Madagascar, Nigeria and Namibia, some boys are not being immunised, possibly out of fear of male sterilisation.

In Malaysia, boys who 'behave effeminately' may be sent to corrective bootcamps.¹⁷

Dress codes in schools may allow girls to wear trousers but prevent boys from wearing skirts.¹⁸

In certain countries, boys, but not girls, can be sentenced to corporal punishment, see for example CRIN's reports on inhuman sentencing of children in Dominica, Guyana, Kiribati and Zimbabwe.¹⁹

Article 5 - the rights under the ICCPR must not be abused by any group, individual or the State

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext

The Committee has made no reference to violations of children's rights under article 5 in its concluding observations to States parties to the Covenant.

Rights under the Covenant are sometimes abused solely on the basis of age. Children come into contact with the justice

system not only through general crime and delinquency laws, but also through committing special non-criminal 'status offences'. Status offences encompass acts that would not be criminal if they were committed by adults.²⁰ Status offences take many different forms in countries, states, and localities around the world - examples include curfew violations, school truancy, running away, begging, bad or anti-social behaviour, gang association, and even simple disobedience.²¹

Article 6: the right to life

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

General Comment 6

In General Comment 6, the Committee asserts that the right to life under article 6 of the ICCPR should not be interpreted restrictively.

The Committee has also noted that the right to life requires that States adopt positive measures. In this connection,

¹⁶ Overseas Development Institute, Gender and Immunisation abridged report, July 2008, p. 5.

¹⁷ The BBC, "Effeminate' boys in Malaysia sent to 'anti-gay' camp", published 19 April 2011, available at: <http://www.bbc.com/news/world-asia-pacific-13133589>.

¹⁸ The Huffington Post, "Let Boys Wear Skirts To School, Says Children Adviser Tam Baillie", published 13 February 2012, available at: http://www.huffingtonpost.co.uk/2012/02/13/let-boys-wear-skirts-to-school-says-adviser_n_1272510.html

¹⁹ Download country reports at: <https://www.crin.org/en/home/campaigns/inhuman-sentencing/campaign-reports>.

²⁰ See for example: "After Surge of Violence, a Curfew in Hartford", New York Times, 22 August 2008, available at: <http://www.nytimes.com/2008/08/24/nyregion/nyregionspecial2/24hartfordct.html?oref=slogin&r=0>.

²¹ See CRIN, Global report on status offences, 2009, available at: https://www.crin.org/docs/Status_Offences_final.pdf.

the Committee considers that it would be desirable for States parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics. Article 6 of the CRC goes further here, expressly incorporating an obligation on States to ensure, to the maximum extent possible, the child's survival and development.

Concluding observations

The Committee has issued recommendations relating to infant mortality,²² high rates of adolescent pregnancies and maternal mortality,²³ incidents of minors killed at the hands of police officers and in other gun related crimes,²⁴ extrajudicial executions of children and the sentencing of children to death.²⁵

When raising the issue of the death penalty for children, it is important that the Committee recalls that such penalties be converted into "penalties that are in conformity with International Human Rights Standards" as per the recommendation of the UN Secretary-General's Study on Violence against Children.²⁶

For children, this means taking into account article 37 of the CRC which explicitly requires that deprivation of liberty is a measure of last resort and for the shortest appropriate period of time. The Committee must urge States not to commute the death sentence for children to a life sentence. While the abolition of the death penalty is of great importance, it has often led to an increase in sentences of life imprisonment.

Article 7 - freedom from torture

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

General Comment 20

Paragraph 5 of the General Comment of article 7 emphasises that this article relates to mental, as well as physical, suffering and reiterates that "the prohibition must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary

measure". According to the Committee, article 7 protects, in particular, children, pupils and patients in teaching and medical institutions.

The wording in this general comment falls short of the human rights standards elaborated in recent years. In particular, the general comment refers to the prohibition of "excessive" chastisement, and does not explicitly refer to the practice of corporal punishment in the private sphere of the home. The Committee on the Rights of the Child's General Comment 8 stipulates that all corporal punishment is prohibited, including in the home.²⁷

Concluding observations

The Committee has urged action from States on a comprehensive range of issues regarding acts that amount to torture of children.

These include corporal punishment in all settings, domestic violence, ill-treatment of children in police stations and by law enforcement officers in general, the treatment of children as adults in asylum procedures, violence against children with disabilities, rape, harmful traditional practices, pre-trial detention of minors, sexual violence in war zones, medical testing on children, and detention of children seeking asylum in poor conditions.²⁸

Article 37(a) of the CRC prohibits torture, cruel, inhuman or degrading treatment or punishment, and explicitly prohibits life imprisonment without parole for offences committed while under the age of 18 years. Article 37 also explicitly requires that deprivation of liberty is only used as a measure of last resort and for the shortest appropriate period of time. During its review of States, the Committee against Torture confirmed that life imprisonment of children constitutes cruel, inhuman or degrading treatment or punishment. In its 2006 review of the United States, for example, the Committee expressed concern at the large number of children sentenced to life imprisonment and called on the State to "address the question of sentences of life imprisonment of children, as these could constitute cruel, inhuman or degrading treatment or punishment."²⁹

CRIN's research has found that 73 States retain life imprisonment as a penalty for offences committed while

22 See for example Paraguay, 2005, CCPR/C/PRY/CO/2

23 See for example Jamaica, 2011, CCPR/C/JAM/3 and Kazakhstan, 2011, CCPR/C/KAZ/CO/1

24 See for Example Paraguay, 2005, CCPR/C/PRY/CO/2 and Romania, 1999, CCPR/C/79/Add.111.

25 See for example Mauritania, 2013, CCPR/C/MRT/CO/1 and the Philippines, 2003, CCPR/CO/79/PHL.

26 UN General Assembly, Report of the independent expert for the United Nations study on violence against children, 19 August 2005, A/60/282, para. 97.

27 UN Committee on the Rights of the Child, General comment No. 8: The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment, 2 March 2007, CRC/C/GC/8, available at: <http://www.refworld.org/docid/460bc7772.html>

28 See for example Netherlands, 2009, CCPR/C/NLD.CO/4, Latvia, 2014, CCPR/C/LVA/CO/3 and Democratic Republic of Congo, 2006, CCPR/C/COD/CO/3.

29 UN Committee against Torture, Conclusions and recommendations of the Committee against Torture on the second periodic report of the United States of America, CAT/C/USA/CO/2, 25 July 2006, para. 34.

under the age of 18 and a further 49 permit sentences of 15 years or longer and 90 for 10 years or longer. Life imprisonment and lengthy prison sentences for child offenders are not the preserve of a diminishing few, they can be found in the criminal laws of the majority of States.³⁰

The Committee must systematically address all forms of life imprisonment of children during reviews of States as a violation of the prohibition on torture and cruel, inhuman and degrading treatment or punishment.

Article 8 - freedom from slavery and servitude

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
- 3.(a) No one shall be required to perform forced or compulsory labour;
- (b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;
- (c) For the purpose of this paragraph the term “forced or compulsory labour” shall not include:
 - (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
 - (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
 - (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
 - (iv) Any work or service which forms part of normal civil obligations.

The Committee has made recommendations around a comprehensive list of issues regarding acts of slavery and servitude. These include abuse, exploitation, maltreatment and trafficking of children for prostitution, sexual exploitation and sale, exploitation of children in employment, child labour, forced labour, street children at risk of violence and exploitation and recruitment of children into armed groups.

Interpretation of this article should take into account article 32 of the CRC that recognises “the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with

the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development”. This also applies to the imposition of military service for children. The United Arab Emirates has recently adopted compulsory national military service starting at 17.³¹ Seventeen-year-olds can volunteer for military service in Cyprus³² and Austria, among other places.³³ In Cuba,³⁴ all male citizens are liable for two years compulsory military service between 1 January of the year they turn 17 and the last day of the year they turn 28.

Article 9 - liberty and security of persons

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

General Comment 35

The Committee adopted a new General Comment (35) on article 9 in its 112th session in October 2014.

The Committee recalled that article 9 guarantees everyone’s right to liberty and security. “Everyone” includes, among others, girls and boys, soldiers, persons with disabilities, lesbian, gay, bisexual and transgender persons, aliens,

30 See CRIN, Life imprisonment of children around the world, 25 March 2015, available at: <https://www.crin.org/en/library/publications/inhuman-sentencing-life-imprisonment-children-around-world>

31 The National UAE, “5,000 young Emiratis to form first batch of military service conscripts”, published 20 July 2014.

32 Child Soldiers International, Child Soldiers Global Report 2008: Cyprus profile, available at: http://www.child-soldiers.org/user_uploads/pdf/cyprus1212248.pdf.

33 The European Bureau for Conscientious Objection, Austria profile, available at: <http://www.ebco-beoc.org/austria>.

34 Child Soldiers International, Data summary on recruitment ages of national armies, published in 2012, available at: http://www.child-soldiers.org/global_report_reader.php?id=562.

refugees and asylum seekers, stateless persons, migrant workers, persons convicted of crime, and persons who have engaged in terrorist activity. (para. 3)

The Committee also explains that “the existence of a disability shall not in itself justify deprivation of liberty but rather any deprivation of liberty must be necessary and proportionate, for the purpose of protecting the individual in question from serious harm or preventing injury to others. It must be applied only as a measure of last resort and for the shortest appropriate period of time, and must be accompanied by adequate procedural and substantive safeguards established by law.” (para.19)

Regarding the notice of reasons for arrest, the Committee stresses that “for some categories of vulnerable persons, directly informing the person arrested is required but not sufficient. When children are arrested, notice of the arrest and the reasons should also be provided directly to their parents, guardians, or legal representatives.” (para. 28)

The Committee attempts to explain the meaning of ‘promptness’ required when an individual is arrested or detained on a criminal charge. The person should be brought promptly before a judge or other officer authorised by law to exercise judicial power and “an especially strict standard of promptness, such as 24 hours, should apply in the case of juveniles.” (para. 33)

While explaining the requirement that the person detained is entitled to trial within a reasonable time or to release, the Committee emphasises that “pretrial detention of juveniles should be avoided, but when it occurs they are entitled to be brought to trial in especially speedy fashion” (para. 37). Regarding detention awaiting trial, the Committee says that “pretrial detention of juveniles should be avoided to the fullest extent possible”. (para. 38)

The general comment includes a paragraph on the relation of article 9 (liberty and security) to article 24 on the protection of children recalling that article 24 “entails the adoption of special measures to protect the personal liberty and security of every child, in addition to the measures generally required by article 9 for everyone.” The Committee expressed that “a child may be deprived of liberty only as a last resort and for the shortest appropriate period of time [and that] the best interests of the child must be a primary consideration in every decision to initiate or continue the deprivation.” The Committee also highlights that “the child has a right to be heard, directly or through legal or other appropriate assistance, in relation to any decision regarding a deprivation of liberty, and the procedures employed should be child-appropriate.”

On immigration detention, the Committee believes “children

should not be deprived of liberty, except as a measure of last resort and for the shortest appropriate period of time, taking into account their best interests as a primary consideration with regard to the duration and conditions of detention, and also taking into account the extreme vulnerability and need for care of unaccompanied minors.” (para. 18).

Children should not be detained for immigration-related purposes and States parties should take measures to ensure that national legislation does not allow for the detention of children in such cases. The Committee’s position on this matter risks weakening the relevant standards and diverges with the approach of the Committee on the Rights of the Child.

In addressing the detention of children in immigration settings, the Committee on the Rights of the Child has set higher standards than for other forms of detention, stating that “[c]hildren should not be criminalised or subject to punitive measures because of their or their parents’ migration status. The detention of a child because of their or their parent’s migration status constitutes a child rights violation and always contravenes the principle of the best interests of the child. In this light, States should expeditiously and completely cease the detention of children on the basis of their immigration status.”³⁵

In contrast, the UN Special Rapporteur on Torture, in his 2015 report to the Human Rights Council on children deprived of liberty, suggests that “when the child’s best interests require keeping the family together, the imperative requirement not to deprive the child of liberty extends to the child’s parents, and requires the authorities to choose alternative measures to detention for the entire family”.³⁶

The UN Commission on Human Rights stated in 1998 that “unaccompanied minors should never be detained”.³⁷

The UN Sub-Commission on the Promotion and Protection of Human Rights, in resolution 2002/23, “reminds States that the detention of asylum-seekers and refugees is an exceptional measure and should only be applied in the individual case where it has been determined by the appropriate authority to be necessary in line with international refugee and human rights law, and encourages States to explore alternatives to detention and to ensure that children under 18 are not detained.”³⁸

35 UN Committee on the Rights of the Child, Report on the 2012 Day of General Discussion on the rights of all children in the context of international migration, para. 78.

36 UN Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, report to the Human Rights Council on children deprived of liberty, A/HRC/28/68, 5 March 2015, para. 80.

37 UN Commission on Human Rights, the Report of the Working Group on Arbitrary Detention: addendum: report on the visit of the Working Group to the United Kingdom on the issue of immigrants and asylum seekers, 18 December 1998, E/CN.4/1999/63/Add.3, para. 37.

38 UN Sub-Commission on the Promotion and Protection of Human Rights, Resolution 2002/23 on International Protection for Refugees, 14 August 2002, E/CN.4/Sub.2/RES/2002/23: Para. 4.

The UN High Commissioner for Refugees, in the UNHCR Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers, stated that “minors who are asylum-seekers should not be detained”.³⁹

Concluding observations

The Committee has issued recommendations on a broad range of issues violating article 9. These include the automatic detention of all persons entering a country irregularly, including children, ill-treatment of children after arrest by police officers, lack of chambers specifically designated for juveniles with specialised judges, children detained with adults, children living in prison with their families, violent practices against children with disabilities including deprivation of liberty and enforced administration of treatments, children detained without charge, pre-trial detention, minimum age of criminal responsibility, arbitrary detention of street children, life imprisonment without the possibility of parole, children tried as adults and the lack of a juvenile justice system.⁴⁰

Although the concluding observations cover many violations of children’s rights, the Committee has failed to take strong positions on issues such as life imprisonment, pre-trial detention and immigration detention⁴¹ and has not urged States to stop violations of children’s rights through other forms of detention including for drug use and mental illness.⁴²

Article 10 - right of detained persons to human treatment

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2.(a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment

appropriate to their age and legal status.

Concluding observations

The Committee has issued recommendations on a broad range of violations under article 10. These include ill-treatment of detained children including when arrested in police stations, collective punishment and strict confinement,⁴³ children detained with adults,⁴⁴ children living in prison with their families, violent practices against children with disabilities including deprivation of liberty and enforced administration of treatments,⁴⁵ alarming prison conditions,⁴⁶ detention of unaccompanied or separated children seeking asylum in police detention facilities for prolonged periods of time,⁴⁷ corporal punishment as a sentence,⁴⁸ excessive length and poor conditions of pre-trial detention of juveniles,⁴⁹ overcrowding of detention centres and life imprisonment without the possibility of parole.⁵⁰

The Committee could take a stronger position regarding inhuman treatment of minors in detention. All forms of life imprisonment are inhuman. Life imprisonment sentences cover a diverse range of practices, from the most severe form of life imprisonment without parole, in which a person is explicitly sentenced to die in prison, to more indeterminate sentences in which at the time of sentencing it is not clear how long the person will spend in prison.⁵¹

The UN has begun to look at life imprisonment of children more generally and in November 2012, the General Assembly urged States to consider repealing all forms of life imprisonment for children.

The UN Human Rights Council’s Resolution on human rights in the administration of justice, in particular juvenile justice, of 2011, urged States to ensure that life without the possibility of parole is not imposed on persons under 18,⁵² but in two resolutions since, the Council has established that no form of life imprisonment should be applied to persons under 18.⁵³ Life imprisonment of child offenders has also recently been included within the remit of the UN Secretary-General’s

³⁹ UN High Commissioner for Refugees, UNHCR Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers, 26 February 1999, Guideline 6.

⁴⁰ See for example Guyana, 2000, CCPR/C/79/Add.121, US, 2014, CCPR/C/USA/CO/4 and Cambodia, 1999, CCPR/C/79/Add.108.

⁴¹ See Norway, 2011/CCPR/C/NOR/CO/6.

⁴² For more on this read CRIN’s submission to the General Comment on article 9 for a detailed analysis of the application of this article to children, available at: https://www.crin.org/docs/FileManager/Article_9_ICCPR_GeneralComment_CRIN_FINAL.pdf and CRIN’s policy paper ‘Stop making children criminals’ on the minimum age of criminal responsibility available at: <https://www.crin.org/en/library/publications/stop-making-children-criminals>.

⁴³ See Argentina, 2010, CCPR/C/ARG/4.

⁴⁴ See Benin, 2004, CCPR/CO/82/BEN.

⁴⁵ See Bulgaria, 2011, CCPR/C/BGR/CO/3.

⁴⁶ See Ethiopia, 2011, CCPR/C/ETH/CO/1.

⁴⁷ See Finland, 2013, CCPR/C/FIN/CO/6.

⁴⁸ See Grenada, 2007, CCPR/C/GRD/CO/1.

⁴⁹ See Guyana, 2000, CCPR/C/79/Add.121

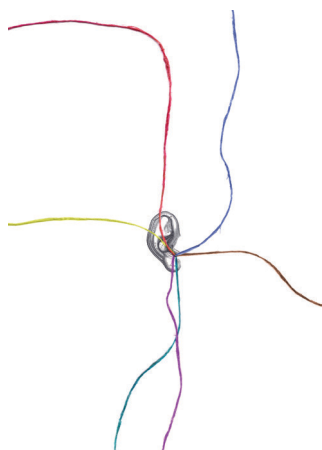
⁵⁰ See US, 2006, CCPR/C/USA/CO/3.

⁵¹ See CRIN, Life imprisonment of children around the world, 25 March 2015, available at: <https://www.crin.org/en/library/publications/inhuman-sentencing-life-imprisonment-children-around-world>

⁵² A/HRC/18/L.9, para. 13.

⁵³ A/HRC/25/L.28, para. 22 and A/HRC/25/L.10.

annual report on the question of the death penalty. In 2014, the report recommended that when the death penalty is abolished for child offenders, States must avoid sentencing children to life imprisonment as an alternative punishment.⁵⁴ The UN Special Rapporteur on Torture in his 2015 report to the Human Rights Council on children deprived of liberty recommends that all forms of life imprisonment must be abolished stating that “life imprisonment and lengthy sentences, such as consecutive sentencing, are grossly disproportionate and therefore cruel, inhuman or degrading when imposed on a child. Life sentences or sentences of an extreme length have a disproportionate impact on children and cause physical and psychological harm that amounts to cruel, inhuman or degrading punishment”.⁵⁵



Article 12 - the right to liberty and freedom of movement

1. *Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.*
2. *Everyone shall be free to leave any country, including his own.*
3. *The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.*
4. *No one shall be arbitrarily deprived of the right to enter his own country.*

General Comment 27

In this general comment the Committee describes liberty

of movement as an “indispensable condition for the free development of a person” but makes no reference to children’s rights under article 12.

Concluding observations

Recommendations issued to States regarding restrictions of the right to liberty and freedom of movement make no explicit reference to children.

Often, restrictions to the freedom of movement are harsher for children. The imposition of curfew laws that typically apply only to children is the most obvious example. Children’s right to freedom of movement is frequently subject to interference as a result of efforts to disperse groups of young people in public spaces.

Interpretations of this article should question whether measures, in particular those resulting from police powers, amount to a justified interference with such a fundamental right. In particular, it should be questioned whether the right to equality and non-discrimination, for example on the grounds of age, are potentially violated when such measures are enacted.

CRIN has authored a report on ‘status offences’,⁵⁶ which details acts that would not be criminal if committed by adults. These might include curfew orders and dispersal zones.



Article 13: Right not to be arbitrarily expelled from a country

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

⁵⁴ UN Secretary General, Report of the Secretary-General on the Question of the Death Penalty, A/HRC/C/27/23, 30 June 2014, para. 74.

⁵⁵ UN Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, report to the Human Rights Council on children deprived of liberty, A/HRC/28/68, 5 March 2015, para. 74.

⁵⁶ See CRIN, Global report on status offences, available at: https://www.crin.org/docs/Status_Offences_final.pdf.

The Committee has issued a few recommendations on children's right not to be arbitrarily expelled from a country including children being treated in the same way as adults in asylum procedures,⁵⁷ detention of foreign minors awaiting deportation⁵⁸ and the need to develop a procedure to address the specific needs of unaccompanied non-citizen children and to ensure their best interests in the course of any immigration, expulsion and related proceedings.⁵⁹

Migrant and refugee children are often dealt with according to their status as migrants or refugees prior to being seen as minors. Children should receive greater protection and be shielded from expulsion.

The Committee on the Rights of the Child in its report on the 2012 Day of General Discussion on the rights of all children in the context of international migration recommended that "[c]hildren should not be criminalised or subject to punitive measures because of their or their parents' migration status" and "[t]o the greatest extent possible, States should conduct continuous and individual best interests of the child assessments as well as formal determination procedures at all stages or decisions of any migration process affecting children, with the involvement of child protection professionals and the judiciary. This includes any proceeding resulting in the child or his/her parents' deportation. States should make clear in their legislation, policy, and practice that the principle of the best interests of the child takes priority over migration and other administrative considerations." Another issue of concern are age determination procedures. Teeth and hand x-rays, for example, have often been suggested as a useful tool to determine the age of asylum seekers. Besides a proven margin error of at least three years, this method raises serious human rights questions. In a position paper published in May 2015, the European Academy of Paediatrics concluded "that it is medically, deontologically, and ethically inappropriate for paediatricians and others in paediatric (or medical) healthcare to engage in the forensic investigation of refugee and asylum seekers in Europe."⁶⁰

Article 14: the right to a fair trial

1. *All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.*
2. *Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.*
3. *In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; (c) To be tried without undue delay; (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it; (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court; (g) Not to be compelled to testify against himself or to confess guilt.*
4. *In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.*
5. *Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.*
6. *When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively*

⁵⁷ Austria, 2007, CCPR/C/AUT/CO/4.

⁵⁸ Czech Republic, 2013, CCPR/C/CZE/CO/3.

⁵⁹ Greece, 2005, CCPR/C/GR/CO/3.

⁶⁰ European Academy of Paediatrics, Age Determination in Refugees and Asylum Seekers in Europe: An EAP Position Paper on the Forensic Involvement of Paediatricians, May 2015, available at: http://events.eventact.com/eap/style/Age_Determination_in_Refugees.pdf. Also see: A. Aynsley-Green, T.J. Cole, H. Crawley, N. Lessof, L.R. Boagj, and R.M.M. Wallace, Medical, statistical, ethical and human rights considerations in the assessment of age in children and young people subject to immigration control, Oxford University Press, May 2012, available at: <http://www.aynsley-green.com/documents/2013/04/medical-statistical-ethical-and-human-rights-considerations-in-the-assessment-of-age-in-children-and-young-people-subject-to-immigration-control.pdf>

that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

General Comment 32

Those under the age of 18 are explicitly addressed within General Comment 32. The Committee notes that procedures should take account of age and the desirability of promoting children's rehabilitation. It furthermore states that juveniles are to enjoy at least the same guarantees and protection as are accorded to adults under article 14 of the Covenant, as well as emphasising that "juveniles need special protection". For example, according to the Committee, in criminal proceedings juveniles should be informed directly of the charges against them, be provided with appropriate assistance in the preparation and presentation of their defence and be tried as soon as possible.

These stipulations are important, since both allowing special treatment for juveniles, whilst also granting the same procedural rights as adults, are provisions that are routinely ignored or transgressed by States parties. Moreover, the Committee explains that States should take measures to ensure that a minimum age of criminal responsibility is established. The Committee stipulates that the "age should take into account their physical and mental immaturity".

Concluding observations

The Committee has issued a few recommendations on children's right to a fair trial including gaps in juvenile justice systems, children tried as adults, the lack of free legal assistance and the low age of criminal responsibility.

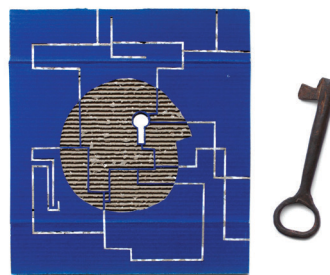
The Committee does not systematically address issues regarding children's rights under article 14. States parties must develop child friendly systems that minimise the challenges they face in each aspect of a legal proceeding, provide them with free legal representation and ensure the rights and guarantees of a fair trial are adapted to their needs. Children suspected of wrongdoing should not lose their rights during trial.

Article 16 – right to recognition as a person before the law

Everyone shall have the right to recognition everywhere as a person before the law.

Most recommendations made by the Committee relate to the issue of birth registration and access to official documentation. This article stipulates that every human being has rights before the law. This is a prerequisite for the right to respect for human dignity.⁶¹

This has particular importance for children. Most violations of children's rights occur because of the refusal to recognise them as subjects before the law and they therefore rarely enjoy legal capacity. Children are often not viewed as human beings with human rights, but rather as an extension of their parents, guardians or the State. It must always be clear that children are rights holders and all human rights apply to them, including the rights set out in the ICCPR.



Article 17 – right to privacy

- 1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*
- 2. Everyone has the right to the protection of the law against such interference or attacks.*

General Comment 16

The Committee notes that article 17 provides for the right of every person to be protected against arbitrary or unlawful interference with his or her privacy, family, home or correspondence as well as against unlawful attacks on his or her honour and reputation.

While some may consider interferences with children's right to privacy to be justified on the basis of their status as children, the following provision is important: "Even with regard to interferences that conform to the Covenant, relevant legislation must specify in detail the precise circumstances in which such interferences may be permitted" (para.8).

This is particularly relevant in respect of the gathering and holding of personal information on computers, databanks and other devices, which may be permitted in respect of children

⁶¹ Article 5 of the African Charter on Human and People's Rights associates the right to recognition as a person before the law and the right to dignity.

but not adults.⁶²

Concluding observations

Our research has found that the Committee has only made one reference to children's right to privacy, during the review of France's State party report in 2008 (CCPR/C/FRA/CO/4 – Collection and storage of personal information should be restricted to children above the age of 13 years who have been convicted of a criminal offence).

Children are particularly vulnerable to breaches of privacy because of the range of situations in which adults have power over them. The internet and mobile phones set new challenges for balancing children's privacy and protection rights.

Children's right to privacy applies to all settings of children's lives and to all circumstances, including their relationships and communications with others, medical advice and treatment, counselling and surveillance.

During legal proceedings, the 'public interest', and freedom of information, are often prioritised over the privacy of children, specially by the media. Children should never be named in the press when their identification could in any way worsen their situation. In addition, criminal records should be expunged when a child reaches 18.⁶³

Article 18 - freedom of thought, conscience and religion

1. *Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.*
2. *No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.*
3. *Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.*
4. *The States parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education*

62 See CRIN's policy paper on access to information: Access Denied: Protect Rights - Unblock Children's Access to Information, June 2014, available at: https://www.crin.org/sites/default/files/access_to_information_final_layout.pdf.

63 See rules 21.1. and 21.2 of the UN Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") available at: <http://www.un.org/documents/ga/res/40/a40r033.htm> and paragraph 66 of the General Comment 10 of the Committee on the Rights of the Child on Children's rights in juvenile justice, available at: <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>.

of their children in conformity with their own convictions.

General Comment 22

General Comment 22 builds on the text of article 18, which refers to the right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs).

In paragraph 6, the Committee holds that article 18(4) permits the public school teaching of history of religions and ethics "if it is given in a neutral and objective way". At the same time, parents or legal guardians have the freedom to ensure that their child receives a religious and moral education in conformity with their own convictions. However, according to the Committee, "public education that includes instruction in a particular religion or belief is inconsistent with article 18.4 unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians".

Concluding observations

The Committee has made a few recommendations to States parties to the Covenant on issues relating to discrimination on the basis of religion in schools including the prohibition of wearing religious symbols, discrimination against children from religious minorities, discrimination on the basis of religion in the funding of schools and religious integrated curriculum in schools.

Article 18 enshrines parents' liberty to educate children in accordance with their own beliefs. But in line with article 14 of the CRC, the Committee can set higher standards for children and shift this focus to children's right to determine and follow their own beliefs under parental guidance.

In some cases the imposition of parents' religious beliefs can lead to irreversible harm to children.

A number of child deaths have been recorded in recent years because parents, from various religious backgrounds, have rejected life-saving medical interventions for their child on the grounds that they are forbidden by their faith, and have instead opted to pray. The Canadian Medical Association has indicated that 19 US states have faith healing exemptions on child abuse and neglect laws.⁶⁴

Non-therapeutic male circumcision performed as a religious or cultural practice that is carried out on infants or very young boys who do not have the capacity to consent or refuse consent is gaining attention as a human rights violation. A

64 Canadian Medical Association, Too much leniency on 'faith healing' parents, published on 25 May 2012, available at: <https://www.crin.org/en/library/news-archive/united-states-too-much-leniency-faith-healing-parents>

global review of neonatal and child male circumcision by WHO and UNAIDS, published in 2010, describes it as one of the oldest and most common surgical procedures and estimates that one in three adult males is circumcised.⁶⁵ A high proportion of circumcisions are carried out on neonates and very young children with no capacity to consent for themselves. Furthermore, in some places circumcision is carried out by non-medically qualified people in a non-clinical environment and without appropriate pain relief, resulting in additional violations of children's rights including to health and - in a number of cases - to life.⁶⁶

Article 19 - freedom of expression and opinion

1. *Everyone shall have the right to hold opinions without interference.*
2. *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*
3. *The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*
 - (a) *For respect of the rights or reputations of others;*
 - (b) *For the protection of national security or of public order (ordre public), or of public health or morals.*

General Comment 34

This general comment addresses article 19 on freedom of expression and the “right to hold opinions without interference” (art.19, para.1). This is a right to which the Covenant permits no exception or restriction. The general comment does not elaborate on children's freedom of expression even though it addresses an ‘autonomy right’ that is frequently denied children, most closely correlating with article 13 of the CRC. Concluding observations

Our research found few mentions of children's rights in relation to freedom of expression:

- Concern over certain legal instruments such as the Law on the Protection of Minors against the Detrimental Effect of Public Information that may be applied in a manner unduly restrictive of the freedom of expression guaranteed under the Covenant and may have the effect

of justifying discrimination against lesbian, gay, bisexual and transgender (LGBT) individuals (Lithuania, 2012, CCPR/C/LTU/CO/3).

- Cases in which children are charged under the Anti-Terrorism Law for freely expressing their opinions and ideas, in particular in the context of non-violent discussions of the Kurdish issue (Turkey, 2012, CCPR/C/TUR/CO/1).
- The prohibition of propaganda of homosexual relations aimed at children (Ukraine, 2013, CCPR/C/UKR/CO/1).

Freedom of expression for children is rarely talked about and traditional attitudes towards children maintain that they should be ‘seen but not heard’. Child protection arguments have often been used as an excuse to restrict children's freedom of expression.⁶⁷

The right to freedom of expression is contingent on the right to access information. As such, there is concern about governmental efforts to ban the disclosure of important information that might be important to children's well-being with sex education, sexuality and drug use the main targets. For example, bans on “homosexual propaganda” have either been passed or proposed in many countries to ‘protect children from information deemed harmful to their health and development’.⁶⁸ Such initiatives violate article 2 and 17, as well as article 13 of the CRC.

It is important that the Committee systematically raise violations of children's freedom of expression and opinion in the review of States parties' reports.

Article 21 and 22 - right to peaceful assembly and freedom of association

Article 21: The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22: 1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. *No restrictions may be placed on the exercise of this right*

⁶⁵ The World Health Organisation and UNAIDS, Neonatal and child male circumcision: a global review, WHO and UNAIDS, April 2010.

⁶⁶ The International NGO Council on Violence against Children, Violating Children's Rights: Harmful practices based on tradition, culture, religion or superstition-Summary, January 2013, p. 21, available at: https://www.crin.org/docs/InCo_Report_15Oct.pdf.

⁶⁷ See CRIN, Censorship: Laws restricting children's access to information, 6 March 2014, available at <https://www.crin.org/en/library/publications/censorship-laws-restricting-childrens-access-information>.

⁶⁸ For more on this, including the list of countries and laws, see CRIN, Campaigns: Protect children, end censorship, available at: <https://www.crin.org/en/home/campaigns/protect-children-end-censorship/problem>.

other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

The Committee has yet to issue a general comment on articles 21 and 22.

Concluding observations

Recommendations issued to States regarding restrictions on the right to peaceful assembly and freedom of association make no explicit reference to children.

The ability to interact is crucial to children's development. Through exposure to different ideas and beliefs children are able to form their own views about the world, build friendships, participate in society and learn to defend their rights and those of others.

While in many cases the denial of political rights extends to the population of a country as a whole, in others, children - but not adults - are excluded from participating in protests or from forming or joining associations simply because of their age. Children are presumed incapable of making informed choices and must be "protected" by adults. In Japan, for example, children's membership in any association is contingent on parental consent until they reach 18.⁶⁹ In Lebanon, children are not allowed to join or form associations.⁷⁰

Article 23: rights relating to the family

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States parties to the present Covenant shall take

appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

General Comment 19

General Comment 19 addresses the obligations under article 23 of the Covenant, concerning the protection of the family, the right to marry and found a family, the requirement of free and full consent for entering into marriage, and equality within marriage and on dissolution or divorce.

According to the Committee in paragraph 1 of the General Comment, there is a link to article 24 of the Covenant addressing the protection of the rights of the child.

In paragraph 2, the Committee also notes that definitions of family may differ from culture to culture. If diverse family concepts exist within a specific state ("nuclear", "extended" and so on), the Committee states that there must be an explanation of the degree of protection afforded to each. States parties should, according to the Committee, provide information on how children are protected at the dissolution of a marriage or on the separation of spouses.

The general comment fails to remind States of the need to protect the rights of individual family members, including from violations of their rights by other members of their family.

Concluding observations

The Committee has raised issues regarding forced and early marriage of girls, early marriage of boys and girls,⁷¹ child custody and legal provisions exempting a rapist from any penalty if he marries the victim.⁷²

In light of the recent debates around the issue of rights relating to the family, States must be urged to recognise the existence of various forms of families and families deemed 'untraditional' must be protected against discrimination. It is also important to remind States of the need to protect the rights of individuals within the family, including from violations of their rights by other members of their family.⁷³

Article 24: the rights of the child

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of

69 UN Committee on the Rights of the Child, Concluding Observations to Japan's Second Periodic Report, CRC/C/15/Add.23126, February 2004, para. 29.

70 Article 5 of Lebanese law 1909: 'Members of an association must not be under 20 years of age, have been convicted of a crime, or have been deprived of civil rights.'

71 See Venezuela, 2001, CCPR/CO/71/VEN.

72 See Venezuela, 2001, CCPR/CO/71/VEN.

73 In June 2014, the UN Human Rights Council (the Council) adopted a resolution on the 'protection of the family', championed by Egypt with strong support from Bangladesh, China, Morocco, Qatar, the Russian Federation and Uganda, among others: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/26/L.20/Rev.1.

protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

General Comment 17 elaborates the provisions contained within Article 24 of the Covenant, and is important because it is concerned entirely with the rights of children. It provides that children have the right to be protected, without discrimination, that they must be registered at birth (particularly to reduce the danger of abduction, sale or trafficking) and that they have the right to acquire nationality. Paragraph 1 of the general comment explains that States must adopt special measures to protect children. Paragraph 2 explains that all other rights in the Covenant also apply to children, and that some afford minors greater rights than adults.

According to the Committee, it is up to the individual State to determine when a child reaches maturity, but the age of criminal responsibility, and the age at which children are entitled to work, “should not be set unreasonably low” (para 4).

Children have the right to non-discrimination and the general comment mentions, in particular, “children who are nationals and children who are aliens or as between legitimate children and children born out of wedlock” (para 5). However, there is no mention of discrimination on the basis of age.

Article 25 - right to participation in public life

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

General Comment

This General Comment refers to article 25, which recognises and protects the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public services.

According to paragraph 3, article 25 protects the rights of every citizen. “No distinctions are permitted between citizens in the enjoyment of these rights on the grounds of race,

colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Any conditions must be based on objective and reasonable criteria, such as requiring a higher age for election or appointment to particular offices than for exercising the right to vote. The exercise of these rights by citizens may not be suspended or excluded except on grounds which are established by law and which are objective and reasonable. Accordingly, the right to vote must be established by law and “may be subject only to reasonable restrictions, such as setting a minimum age limit for the right to vote”. However, the general comment emphasises that it is unreasonable to restrict the right to vote on the ground of physical disability or to impose literacy, educational or property requirements (para.11).

This latter clause is particularly relevant for children since under-18s are often ineligible to vote on the grounds that they are perceived to have a limited capacity, literacy, level of education and so on. Interestingly, discrimination on the grounds of age is permitted, but discrimination on the basis of these factors perceived to accompany age level – education, literacy and so on – is prohibited. This perhaps raises questions about the circumstances in which we think children ‘lack capacity’ for political participation.

Concluding observations

The Committee has made a number of recommendations to States parties to the Covenant on issues relating to the right to participation in public life and they relate to low rates of birth registration and statelessness.

There are no references to children’s right to participate in political processes.

The relatively few mentions of children’s rights under article 25 reinforce the idea that children are merely the adults of tomorrow.

Most public decisions affecting children are made without considering their views or involving them. Children are disproportionately affected by government decisions but their needs are rarely recognised in the law and policies of the government and the parliament.

No country in the world allows under-16s to vote and only a minority allow children aged 16-18 the vote.⁷⁴ But children (and adults) encompass a wide range of skills, competencies.

⁷⁴ See CRIN, The right to vote: where under 18s can vote, available at: <https://www.crin.org/en/library/publications/right-vote-countries-where-under-18s-can-vote>.

Article 26 - equality before the law

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Concluding observations

The Committee has urged action from States on a comprehensive range of issues regarding acts that amount to discrimination against children, including discrimination against minority groups in education,⁷⁵ low rates of birth registration, inadequate protection of the enjoyment of the rights of indigenous peoples, specifically the protection of children against discrimination and sexual abuse, violent practices against children with disabilities, discrimination on the basis of religion, discrimination in acquiring nationality,⁷⁶ including in cases where mothers are unable to transmit their nationality to their children, discrimination against children born out of wedlock,⁷⁷ discrimination against individuals on the basis of their sexual orientation, including in the educational system,⁷⁸ discrimination against girls with regard to access to education, prohibition of propaganda of homosexual relations aimed at children.⁷⁹

Article 27 - rights of minorities

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Concluding observations

The UN Minorities Declaration in its article 1 refers to minorities as based on national or ethnic, cultural, religious and linguistic identity. The Committee has urged action from States on a comprehensive range of issues regarding acts that amount to discrimination against children from minority groups. These include trafficking of minority women and children, inadequate protection of the enjoyment of the rights of indigenous peoples, specifically the protection of children against discrimination, and sexual abuse and discrimination against minority and indigenous children in education.⁸⁰

General Comment 15: the position of aliens under the Covenant

In General Comment 15, the Committee emphasises that the rights under the Covenant must be guaranteed without discrimination between citizens and aliens. This includes the stipulation that the children of aliens are entitled to those measures of protection required by their status as minors (para.7).



⁷⁵ See Serbia, 2011, CCPR/C/SRB/CO/2.

⁷⁶ See Syria, 2005, CCPR/CO/84/SYR.

⁷⁷ See Namibia, 2004, CCPR/CO/81/NAM.

⁷⁸ See Mexico, 2010, CCPR/C/MEX/CO/5.

⁷⁹ See Ukraine, 2013, CCPR/C/UKR/CO/1.

⁸⁰ See Australia, 2009, CCPR/C/AUS/CO/5, Greece, 2005, CCPR/CO/83/GRC and Mongolia, 2011, CCPR/C/MNG/CO/5.



PART IV

FINDINGS & RECOMMENDATIONS

Key findings and recommendations

Recommendations to the Human Rights Committee

As stated by the Committee in its General Comment 17 on article 24 of the Covenant, all rights in the Covenant apply to children and some afford minors greater rights than adults. It is on this basis that we analysed the general comments and concluding observations of the Committee.

As a general observation, we note that violations of children's rights are addressed almost throughout the concluding observations and general comments of the Committee. States are urged to take action on a wide range of issues facing children: from harmful traditional practices, discrimination against minority children in education, child labour and child trafficking to medical testing on children and corporal punishment in all settings.

Nevertheless, children's rights seem to be better highlighted for issues relating to protection - articles 7,8 and 10 for example - than for civil rights. And even where the Committee recognises the need for higher standards of protection for children, sometimes these standards remain low.

We therefore recommend that the Committee systematically addresses children's rights in its interpretation of each article of the Covenant and recognises the highest standards of protection of civil and political rights for children, through, for example:

- Reminding States of their obligation to protect children from discrimination facing both girls and boys, as well as children who identify as transgender;
- Addressing life imprisonment of children as a violation of the prohibition on torture and cruel, inhuman and degrading treatment or punishment, urging States parties to abolish all forms of life sentences for child offenders and remind them that, when abolishing the death penalty, this sentence should not be commuted to a life sentence;
- Continuing to raising the issue of corporal punishment and recommend that States parties introduce legislation to abolish this practice in all settings. The Committee must also consider amending its General Comment no. 20 on the prohibition of torture to explicitly refer to the practice of corporal punishment in the private sphere of the home;
- Addressing children's freedom of expression during its review of State party reports and consider amending its General Comment no. 34 to elaborate on children's freedom of expression;
- Addressing the issue of discrimination on the basis of age, highlighting that all forms of discrimination

against children are made worse because of their age and vulnerability;

- Looking into restrictions of children's right to peaceful assembly and freedom of association and recommending that States parties grant children full enjoyment of these rights, through legal reform and the development of adequate spaces for children to express their views and form or join associations;
- Emphasising children's right to follow their own beliefs under parental guidance in accordance with the child's evolving capacities, rather than 'parents' right' to decide this;
- Recognising children's right to be citizens by allowing them to participate in political processes and considering amendments to General Comment no. 25 which allows age discrimination when it comes to voting rights.

We also urge the Committee to challenge emerging issues in its interpretation of the Covenant, for example, by:

- Reacting to the new challenges for balancing children's enjoyment of their right to privacy and their right to be protected, such as those that emerge with online surveillance measures.
- Following the recent attempt by some States to restrict the definition of the family,⁸¹ reminding States of the need to protect the rights of individuals within the family, including from violations of their rights by other members of their family and to accept the reality that various forms of families exist.

Please note that these recommendations are not exhaustive. We encourage others to use our research to highlight violations and share their recommendations with the Committee and with us at info@crin.org

81 In June 2014, the UN Human Rights Council adopted a resolution on the 'protection of the family', championed by Egypt with strong support from Bangladesh, China, Morocco, Qatar, the Russian Federation and Uganda, among others: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/26/L.20/Rev.1.

The role of child rights advocates

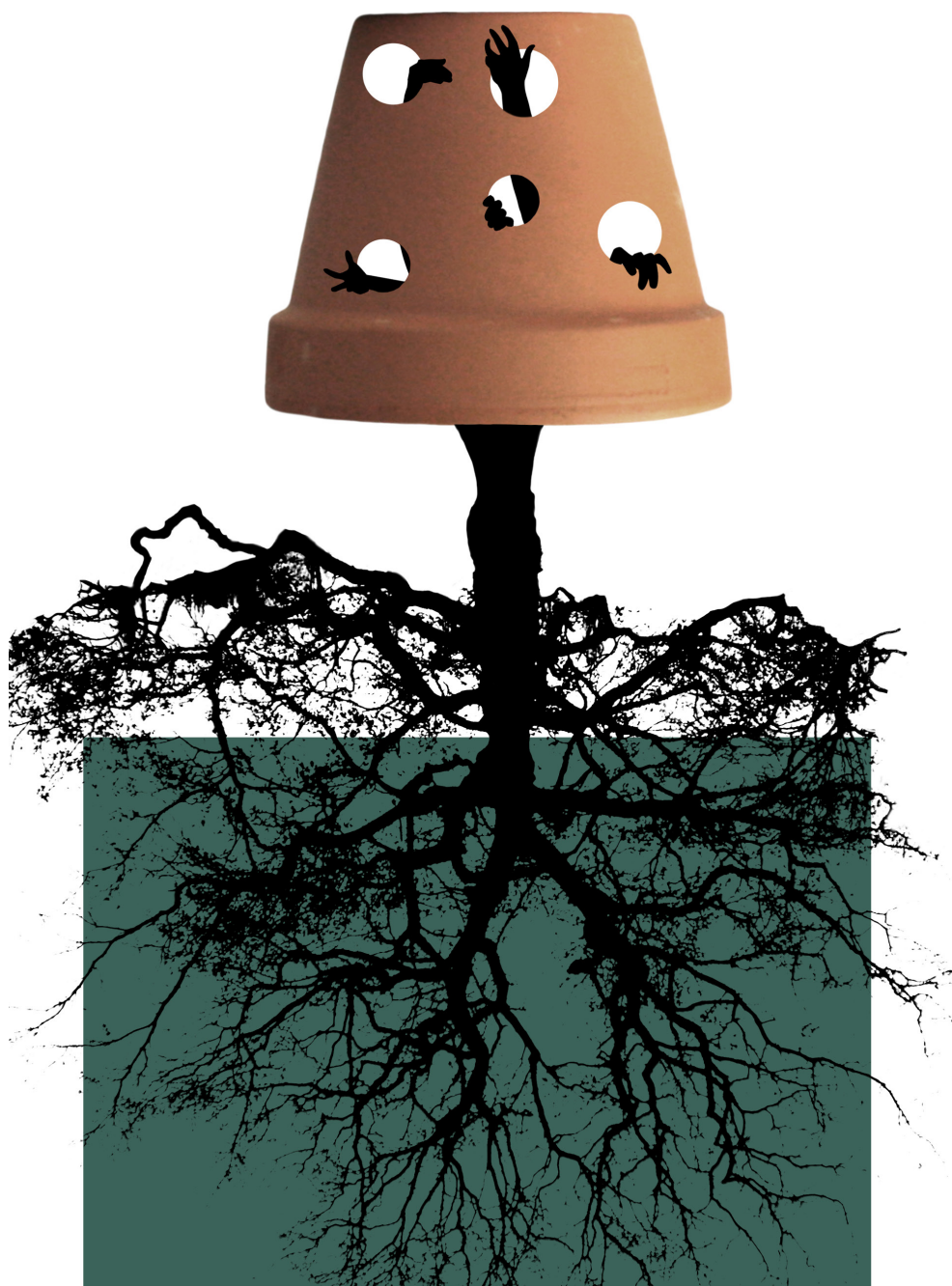
Children's rights advocates can engage with the Committee to monitor and report on violations of children's rights under all rights recognised in the Covenant, including under-reported issues such as violations of:

article 4 on the right of States parties to derogate from their obligations under the Covenant "in time of public emergency";
article 11 on freedom from prison due to the inability to fulfill a contractual obligation;
article 15 on freedom from retroactive criminal law;
article 20 on the prohibition of propaganda advocating war or national hatred.

There are different ways in which NGOs can take part in the reporting process of the Committee, including by providing:

- alternative reports that contain information on the implementation of some or all of the provisions of the Covenant in regards to children's rights;
- comments on the reports of States parties and their written replies to the list of issues
- information on the implementation by the State party of the previous concluding observations of the Committee;
- oral comments with interpretation and replies to questions from the members. Since its 103rd session, the Committee has allocated time for NGOs to engage with the members during a formal closed meeting preceding the examination of the State party's report.

Additionally, NGOs can provide the Committee with detailed information on violations of children's rights during informal briefings and contribute to the drafting of new general comments.



ANNEX I

The International Covenant on Civil and Political Rights

Article 1: the right to self-determination

The right to self determination is considered to be one of the foundations of all human rights. By virtue of that right, people should be able to freely “determine their political status and freely pursue their economic, social and cultural development”.

This right applies equally to children who have a right to participate in the free determination of their political status and to choose the form of their constitution and government.

Laws and policies which discriminate on the basis of age often exclude children from political life. State Parties must clearly recognise children's right to self determination in national legislation.

Articles 2-5: supporting guarantees

Article 2 directs States to immediately take steps to ensure respect and enjoyment by all individuals of the substantive ICCPR rights “without discrimination of any kind”. The article also sets an obligation on State Parties to “adopt legislative or other measures” to give effect to the Covenant and to provide effective domestic remedies for persons whose rights are violated.

The interpretation of this article for children should make sure that all measures taken to consider children's specific needs and ensure they are not excluded from accessing remedies and are discriminated against by national laws and policies. This includes measures that directly discriminate against children such as age status offences or ones that discriminate against them indirectly by neglecting their special protection needs. Children's rights violations are rife all around the world. If children are denied access to effective remedies, their ability to enjoy their other human rights is vetoed because they have no power to enforce them.

Article 3 guarantees equality between men and women in the enjoyment of the rights recognised in the Covenant. This guarantees equality of access to all rights for boys and girls and should take into account the specific gender inequalities faced during childhood years.

The Covenant is a living document and must take into account new emerging issues and debates in the field of gender identity and less rigid gender roles, including the discrimination faced by children.

Article 4 confers the right of State Parties to derogate from their obligations under the Covenant “in time of public emergency” with limits that constitute guarantees against abuse by the State.

States must ensure that any derogation from obligations under the Covenant are not exclusive to children, and are necessary, legitimate and proportionate to the emergency in question.

Article 5 provides that rights under the ICCPR must not be abused by any group, individual or the State. Children have the right to enjoy all rights provided for in the Covenant and no group, individual or the State itself should act in any way that undermines the enjoyment of these rights. *Children are often the victims of age discrimination imposed to them by the State through laws and policies including status offences (curfew violations, disobedience, begging, truancy...), and by adults. Read more about status offences.*

Article 6 - The right to life

The Human Rights Committee described the right to life in its General Comment No. 6 as “the supreme right”. The individual has the right not to be arbitrarily or unlawfully deprived of life by the State and the State should adopt measures to protect the right to life.

Paragraph 5 specifically prohibits the death penalty for children. When calling for the abolition of such sentences, it is important to recall that they must be converted into “penalties that are in conformity with International Human Rights Standards” as per the recommendation of the Secretary General's study on Violence against Children.

For children, this means taking into account article 37 of the Convention on the Rights of the Child (CRC) which explicitly requires that deprivation of liberty be a measure of last resort and for the shortest appropriate period of time. The Committee must urge States not to commute the death sentence for children to life imprisonment. While the abolition of the death penalty is of great importance, it has often lead to an increase in sentences of life imprisonment.

Like the Committee noted in its General Comment no.6, the right to life should not be interpreted narrowly and its protection requires that States adopt positive measures. The Committee goes on to say that “States parties [must] take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.”

Article 6 of the CRC expressly incorporates an obligation on

States to ensure, to the maximum extent possible, the child's survival and development.

Article 7: Freedom from torture or cruel, inhuman or degrading treatment or punishment

The prohibition of torture is an absolute right – this means that it cannot be derogated from, or excused for any reason. Torture is usually committed by an agent of the state for a specific reason, and causes severe pain or suffering.

This prohibition applies to children wherever they are and is further highlighted in article 37(a) of the CRC.

According to UNICEF Innocenti working paper on Child Victims of Torture and Cruel, Inhuman or degrading Treatment: "When the victim is a child, his or her greater vulnerability must be taken into account in determining whether the acts inflicted constitute torture or cruel, inhuman or degrading treatment, according to jurisprudence of international courts and other bodies."

On degrading or inhuman treatment, the European Court of Human Rights "made it clear that states are required [...] to take measures [that] provide effective protection, in particular, of children and other vulnerable persons and include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge."¹

Article 8: Freedom from slavery and servitude

This article recognises the right to not be held in slavery or servitude or to be required to perform forced or compulsory labour. The Rome Statute of the International Criminal Court, in its article 7 (2) (c), defines "enslavement" as "the exercise of any or all of the powers attaching to the right of ownership over a person ... and includes the exercise of such power in the course of trafficking in persons, in particular women and children".

Interpretation of this article should take into account article 32 of CRC that recognises "the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development".

This applies to the imposition of the military service for children. The United Arab Emirates has recently adopted compulsory national military service starting at 17. Seventeen-year-olds can volunteer to military service in

Cyprus and Austria. In Cuba, all male citizens are liable for two years compulsory military service between 1 January of the year they turn 17 and the last day of the year they turn 28.

Article 9: Liberty and security of person

Article 9 upholds the right to liberty and security of the person and freedom from arbitrary arrest or detention. Under this article States should take special measures to protect children who are arrested, charged with criminal offences or otherwise deprived of their liberty.

More particularly:

- Any use of pre-trial detention must be not only exceptional, but a measure of last resort, and that children who are so detained must be brought before a court without delay;
- Children should not be detained because of their migrant status;
- Children should not be criminalised for drug use. The use of drugs should be dealt with as a health issue and the focus should be on the prevention of harm related to drug use;
- Children with mental health problems should not be systematically held in institutions.

It should also be noted that the Convention on the Rights of Persons with Disabilities (CRPD) in setting out the right to liberty and security of person prohibits the use of disability - including mental disability (article 1) - as a ground of deprivation of liberty.² The detention of a person on the basis of mental health or disability may also constitute discrimination under article 2 of the UN Convention on the Rights of the Child and article 26 of the International Covenant on Civil and Political Rights.³ Where detention is authorised for children in circumstances in which it would not be permitted for adults, this raises further issues of discrimination on the basis of age.⁴

Article 10: Right of detained persons to humane treatment

Article 10 provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

¹ The Council of Europe, The Prohibition of Torture, A guide to the implementation of Article 3 of the European Convention on Human Rights, 2002.

² CRPD, Article 14(1)(b). See Bartlett, "A mental disorder of kind or degree warranting confinement: examining justifications for psychiatric detention" International Journal of Human Rights, 30 August 2012 for further discussion of the impact of Article 14 of the CRPD as a ground of discrimination.

³ See Richardson, "Balancing autonomy and risk: A failure of nerve in England and Wales?" International Journal of Law and Psychiatry, 9 January 2005 for a discussion of discrimination and the justifications of non-consensual treatment in the mental health context.

⁴ See Stone, "The Civil Commitment Process for Juveniles: An Empirical Study" University of Detroit Law Review, Vol. 65, p. 679 for examples of involuntary commitment procedures for children with mental health problems.

The article requires persons detained in pretrial detention to be separated from convicted prisoners, and children to be separated from adults. It also requires prisons to be focused on reform and rehabilitation rather than punishment.

Paragraph 2(b) requires that “accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication” and paragraph 3 requires that “juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.”

Interpretation of this article should highlight that children should be kept out of the criminal justice system; they should be met with systems which renounce retribution and focus exclusively on children's rehabilitation, with the necessary attention to public safety and security.

Article 11: The freedom from prison due to inability to fulfill a contractual obligation

This article clearly states that no one should be imprisoned due to an inability to fulfill a contractual obligation. It is important to highlight here that in some countries children cannot enter into contracts. States must be encouraged to allow children who have the capacity to enter into contracts and they must not be imprisoned “merely on the ground of inability to fulfil a contractual obligation”.

Article 12: The right to liberty and freedom of movement

The right to liberty and freedom of movement applies equally to all residents of any State - including citizens and noncitizens, and can be restricted only where necessary to protect national security, public order or health, and the rights and freedoms of others. The article also recognises the right to enter one's own country.

Often, restrictions to the freedom of movement are harsher for children. The imposition of curfew laws that typically apply only to children is the most obvious example. Many of these restrictions are based on adults' belief that children need to be protected from resorting to criminal activities and fear of antisocial behavior. For example curfew laws typically restrict children to their homes during nighttime hours and under disobedience laws children may be reported to the authorities simply for disobeying their parents. States must ensure that children's right to liberty and freedom of movement apply equally to children as they do to adults.

Article 13: Right not to be arbitrarily expelled from a country

This article prohibits the arbitrary expulsion of persons residing in a country. Migrants and refugees are the most

affected by expulsion.

Migrant and refugee children are often dealt with according to their status prior to being seen as minors. Children should receive higher protection level and be protected from expulsion.

The Committee on the Rights of the Child in its report on the 2012 Day of General Discussion on the rights of all children in the context of international migration recommended that “[c]hildren should not be criminalised or subject to punitive measures because of their or their parents' migration status” and “[t]o the greatest extent possible, States should conduct continuous and individual best interests of the child assessments as well as formal determination procedures at all stages or decisions of any migration process affecting children, with the involvement of child protection professionals and the judiciary. This includes any proceeding resulting in the child or his/her parents' deportation. States should make clear in their legislation, policy, and practice that the principle of the best interests of the child takes priority over migration and other administrative considerations.”

Article 14: Right to a fair trial

Article 14 recognises and protects the right to justice and to a fair trial.

Children suspected of wrongdoing should not lose their rights during trial. Article 40(2) of the CRC provides the main rights and guarantees that ensure that every child accused of having infringed the penal law receives a fair treatment and trial. Article 9(3) of the Covenant reaffirms the right “to be brought promptly before a judge or other officer authorised by law to exercise judicial power”.

In its General Comment No. 10 on Children's Rights in Juvenile Justice, the Committee on the Rights of the Child reaffirms children's right to a fair trial:

“A fair trial requires that the child alleged as or accused of having infringed the penal law be able to effectively participate in the trial, and therefore needs to comprehend the charges, and possible consequences and penalties, in order to direct the legal representative, to challenge witnesses, to provide an account of events, and to make appropriate decisions about evidence, testimony and the measure(s) to be imposed.... Taking into account the child's age and maturity may also require modified courtroom procedures and practices.”

Children need to be met with a child friendly justice system that minimises the challenges they face in each aspect of a legal proceeding, provides them with free legal representation and ensures the rights and guarantees of a fair trial adapted to their needs.

Article 15: Freedom from retroactive criminal law

No one can be held for an offence that was not a crime at the time it was committed.

The article also requires the imposition of the lesser penalty where criminal sentences have changed between the offence and conviction.

It is important here to highlight that adults convicted of an offence committed while they were children should be tried as children.

Article 16: Right to recognition as a person before the law

Everyone has the right to be recognised as a person before the law. This means they are recognised to be subject to the protection offered by the legal system and the responsibilities required by it.

This is a very important right for children. Most violations of children's rights occur because of the refusal to recognise them as subjects before the law. Children are often not viewed as human beings with human rights, but rather as an extension of their parents, guardians or the State. It must always be highlighted that children are rights holders and all human rights apply to them, including the rights set out in the ICCPR.

Article 17: Right to privacy

Article 17 provides for the right of every person to be protected against arbitrary or unlawful interference with his privacy, family, home or correspondence as well as against unlawful attacks on his/her honour and reputation.

This article, similarly to article 16 of the CRC, protects the child's privacy in all situations, including within the family, alternative care, and all institutions, facilities and services. Interpretations of this article must highlight children's particular vulnerability to breaches of privacy because of the range of situations in which adults have power over them.

Article 18: Freedom of thought, conscience and religion

In its General Comment No. 22, the Human Rights Committee explains that this freedom "encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others."

Article 18 of the CRC enshrines parents' liberty to educate children in accordance with their own beliefs. Article 14 of the CRC sets higher standards for children and shifts this

focus to children's right to determine and follow their own convictions under parental guidance - as opposed to control - in accordance with the child's evolving capacities.

Article 19: Freedom of expression and opinion

Everyone has the right to seek, receive and impart information and ideas without fear or interference. This right applies equally to children as it does to adults. Article 13 of CRC also enshrines children's right to freedom of expression. Freedom of expression for children is rarely talked about, but it is an important indicator of the degree to which children are treated as rights holders. Children's right to freedom of expression should be explicitly guaranteed in legislation.

Article 20: Prohibition of propaganda advocating war or national, racial or religious hatred

This article states that any propaganda for war and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

School textbooks for example should not be used to advocate for hatred and discrimination. For example, it has been argued that Israeli textbooks contain bias against Palestinians and depict them as 'terrorists, refugees and primitive farmers', North Korean textbooks contain anti-foreign propaganda against foreigners and some Indian textbooks encourages caste discrimination.

Article 21: Right to peaceful assembly

This article recognises everyone's right to peaceful assembly, limiting restrictions to this right for reasons such as the interests of national security or public safety, public order, etc...

Children's right to peaceful assembly is recognised in article 15 of the CRC. While in many societies restrictions to the right to peaceful assembly extend to the population as a whole, in others they apply only to children. Interpretation of this article must highlight the particular barriers children face in enjoying this right and remind States to explicitly recognise this right for children in national legislation as recommended by the Committee on the Rights of the Child.

Article 22: Freedom of association

This article recognises everyone's freedom of association, limiting restrictions to this right for reasons such as the interests of national security or public safety, public order, etc.

Freedom of association implies the right to form associations

as well as to join and to leave associations. Children's freedom of association is recognised in article 15 of the CRC. Limitations to the enjoyment of this right are often more restrictive for children. Status offence laws such as the imposition of curfew laws disproportionately affect children. Curfew laws typically apply only to children and not only serve to stigmatise and criminalise young people, but obstruct them from forming friendships and getting involved in society.

The Committee on the Rights of the Child has recommended that this right for children guaranteed by article 15 should be reflected in legislation.

Article 23: The family and the right to marry

Article 23 guarantees the right to protection of the family and its members. It also reaffirms the right of men and women of marriageable age to marry and provides that no one shall enter into marriage without their consent.

In its General comment No. 19, the Human Rights Committee “notes that the concept of the family may differ in some respects from State to State, and even from region to region within a State, and that it is therefore not possible to give the concept a standard definition.”

Paragraph 4 provides that States should “take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution.”

General comment No. 19 notes that “any discriminatory treatment in regard to the grounds and procedures for separation or divorce, child custody, maintenance or alimony, visiting rights or the loss or recovery of parental authority must be prohibited, bearing in mind the paramount interest of the children in this connection.”

It is crucial to remind States that various forms of families exist and families deemed ‘untraditional’ must be protected against discrimination. It is also important to remind States of the need to protect the rights of the different family members, including from violations of their rights by other members of their family.

Article 24: Protection of the rights of the child

Article 24 recognises the right of every child, without any discrimination, to receive from his family, society and the State the protection required by his status as a minor and sets an obligation on State Parties to adopt special measures to protect children.

In its General comment No.17, the Human Rights Committee

“points out that the rights provided for in article 24 are not the only ones that the Covenant recognizes for children and that, as individuals, children benefit from all of the civil rights enunciated in the Covenant.”

This article therefore provides for the need to adopt special measures to permit a child to enjoy all rights recognised by the Covenant “as required by his status as a minor” (Article 24 paragraph 1 of the Covenant).

Article 25: Right of participation in public life

Every citizen has the right to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public services. The right to participation in public life is related to the right of self determination expressed in Article 1 of the Covenant.

This right refers to children's political rights, including participation to political life - it is closely linked to the right to vote, freedom of association ([article 15](#) of the CRC) and freedom of thought, conscience and religion ([article 14](#) of the CRC).

Children are rarely given opportunities to participate in public life because they are seen as simply appendages of their parents, community or the state.

For example, no country in the world allows under-16s to vote and only a minority allow children aged 16-18 the vote. This is because children are routinely dismissed as incapable of making reasoned decisions. The Committee itself, under General comment 25 allows discrimination of the enjoyment of the right to vote on the basis of age while emphasising that it is unreasonable to restrict this right on the ground of physical disability or to impose literacy, educational or property requirements (para.11).

Article 26: Equality before the law

Everyone has the right to equal protection before the law from “discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

The idea that all individuals must have equal rights is one of the central concepts of human rights.

The importance of equality before the law applies equally to children and adults. Yet children's rights in this area, namely their ability to enforce their rights and challenge violations, are largely neglected or ignored. In addition to gender, race, religion, nationality and sexuality, a person's age shapes how they are treated by others and what types of human rights violations they endure. Interpretations of this article must

also take into account discrimination on the basis of age. All forms of discrimination against children are exacerbated by virtue of their age and vulnerability which mean they have fewer opportunities for challenging discrimination because, for example, they do not have access to courts and complaints mechanisms on an equal basis with adults.

Article 27: Rights of minorities

Persons belonging to ethnic, religious or linguistic minorities should not be denied the right to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Article 30 of the CRC also protects the rights of children from minority or indigenous groups to enjoy their culture, practise their religion and use their language together with other members of their group.

It is important to protect the rights of children belonging to ethnic, religious and linguistic minorities because childhood is the time when people develop their own identity and form views about the world and others.

Optional Protocol to the International Covenant on Civil and Political Rights

The first Optional Protocol establishes an individual complaint mechanism for the ICCPR. The Optional Protocol gives competence to the Human Rights Committee to consider complaints from individuals - including children - who claim their rights under the Covenant have been violated.

Read the [General Comment](#) of the Human Rights Committee on the obligations of States Parties under the Optional Protocol.

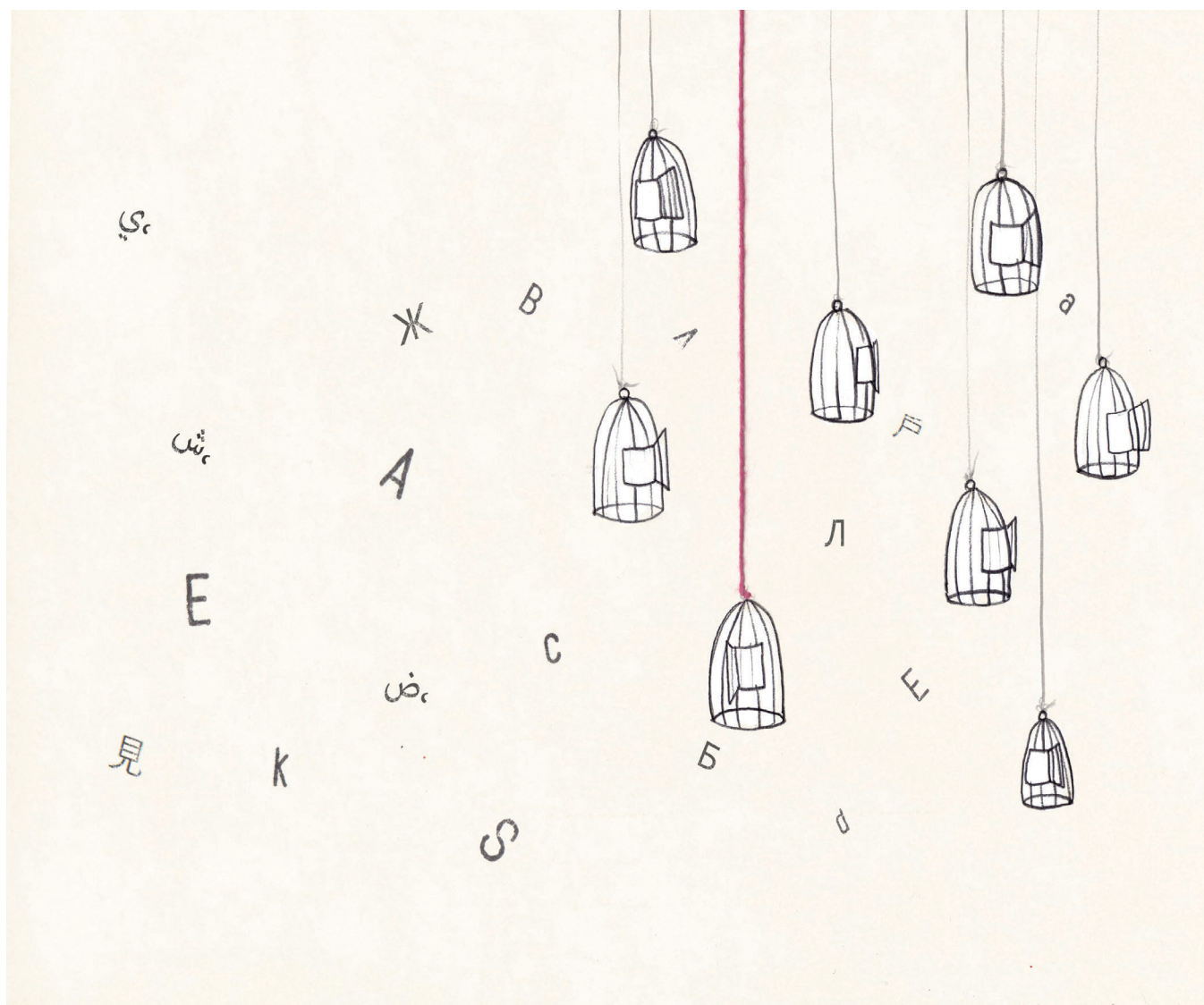
Read the [Comparative study](#) conducted by CRIN of the different treaty body complaints procedures, including the new Optional Protocol to the CRC that establishes a complaints procedure.

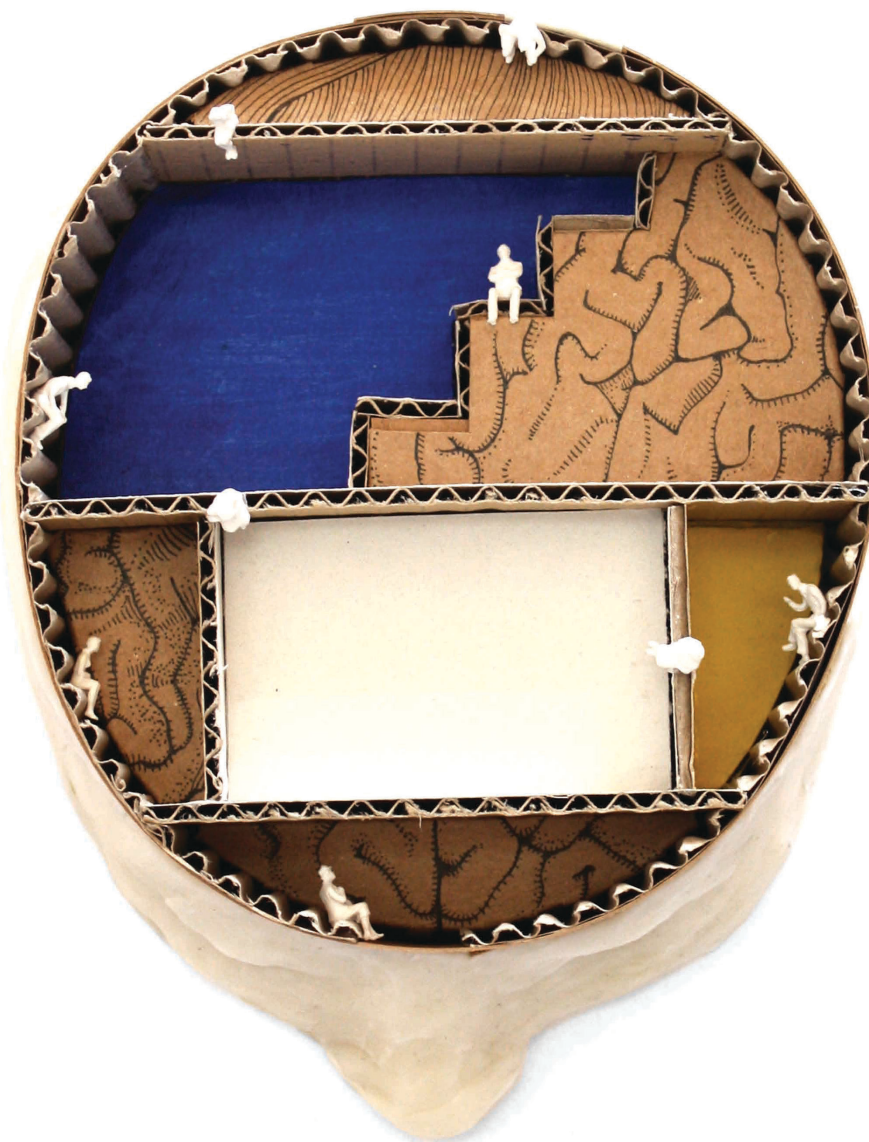
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty

The Second Optional Protocol provides for the total abolition of the death penalty.

The Optional Protocol allows State parties to retain the death penalty in time of war if they make a reservation to that effect at the time of ratification or accession.

Article 6 (5) of the ICCPR specifically prohibited the death penalty for children.





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