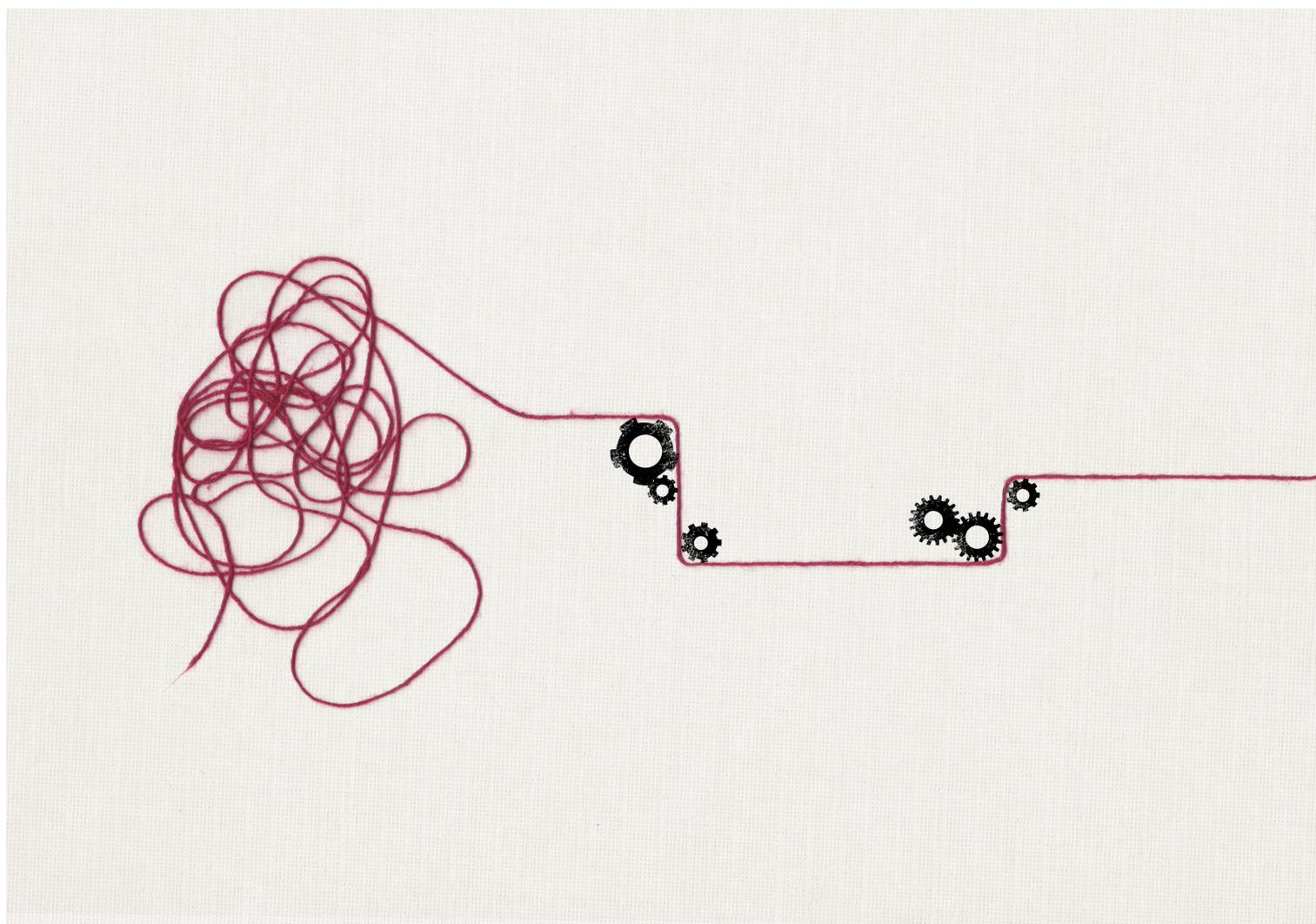


CHILDREN'S RIGHTS AND THE UN COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS - AN ANALYSIS



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PART I

INTRODUCTION

All human rights apply to children, but even with the advent of the Convention on the Rights of the Child (CRC) 25 years ago, which set out specific rights for children, violations of their economic, social and cultural rights continue unabated. Extreme poverty affects children even in the richest countries; decisions around family and alternative care are not always made with the best interests of the child in mind; millions of children are denied access to quality, sometimes life saving, health care; and more than 75 million children are excluded from primary education, with children of all ages denied access to quality education that encourages their participation and critical thinking.

Additionally, article 2 of the International Covenant on Economic, Social and Cultural Rights (the Covenant) states that the fulfillment of economic, social and cultural rights can only be achieved over time, and therefore calls for the progressive realisation of these rights. This has sometimes made it difficult to link deprivations of rights to policy failures, limiting the avenues to hold governments accountable for violations of these rights.

While economic, social and cultural rights are recognised specifically for children in the CRC, the review by the Committee on Economic, Social and Cultural Rights (the Committee) of States' obligations under the Covenant provides a strong platform to further elaborate these rights for 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. The aim is to draw a clear picture of persistent violations of children's rights in a given country, as raised by UN human rights mechanisms, with the eventual goal of matching them with avenues of redress. The extracts also 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, 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

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 children's economic, social and cultural rights and how every right recognised by the Covenant applies to children (see annex 1).

The Wiki enabled us to assemble 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

AN ANALYSIS OF CHILDREN'S RIGHTS IN THE WORK OF THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

An analysis of children's rights in the work of the Committee on Economic, Social and Cultural Rights

An analysis of children's rights in the work of the Committee on Economic, Social and Cultural Rights

The Committee holds two 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 21 general comments relating to the Covenant and, while they are all relevant to children, certain general comments have particular significance.

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.*

Recommendations issued to States on the right to self-determination make no explicit reference to children.

Laws and policies which discriminate on the basis of age often exclude children from political life and don't allow them to be actively engaged in the realisation of their rights. State parties must clearly recognise children's right to self determination in national legislation and develop policies that allow children to be involved in their economic, social and cultural development.

Paragraph 2 of article 1 refers to the right to use natural wealth and resources. Activities of businesses can have an impact on the realisation of this right, and this should be taken into account in any business strategy. The use of land for business purposes should not cause displacement of communities nor should it diminish the resources of the land for future generations.

Paragraph 19 of the Committee on the Rights of the Child's General Comment 16 on States' obligations regarding the impact of the business sector on children's rights explains: "The activities and operations of business enterprises can impact on the realization of article 6 [children's right to survival and development] in different ways. For example, environmental degradation and contamination arising from business activities can compromise children's rights to health, food security and access to safe drinking water and sanitation. Selling or leasing land to investors can deprive local populations of access to natural resources linked to their subsistence and cultural heritage; the rights of indigenous children may be particularly at risk in this context."¹

Article 2 - Achieving progressive realisation

- 1. Each State party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.*
- 2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*
- 3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.*



¹ UN Committee on the Rights of the Child, General comment No. 16: State obligations regarding the impact of the business sector on children's rights, 17 April 2013, CRC/C/GC/16, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f16&Lang=en

General comments

According to the Committee in General Comment 20, discrimination undermines the fulfilment of economic, social and cultural rights for a significant proportion of the world's population. 'Substantive' discrimination (i.e. discrimination in practice) must be addressed, rather than only 'formal' discrimination (such as creating or amending legislation). The Committee makes particular mention of discrimination in the private sphere, noting that some families, for example, may refuse to send girls to school (para. 11). The Committee devotes a section to discrimination based on birth, prohibited in Article 10. It emphasises that discrimination based on parentage should be prohibited, particularly in respect of those who are born out of wedlock, born of stateless parents or are adopted or constitute the families of such persons (para. 26). It also states that the prohibited ground of birth includes descent, especially on the basis of caste and analogous systems of inherited status: "States parties should take steps, for instance, to prevent, prohibit and eliminate discriminatory practices directed against members of descent-based communities and act against dissemination of ideas of superiority and inferiority on the basis of descent". In paragraph 30, the Committee notes that the ground of nationality should not bar access to Covenant rights, so that all children within a State, including those with an undocumented status, have a right to receive education and access to adequate food and affordable health care.

In its General Comment 3 on the nature of States parties' obligations, the Committee notes that "thus while the full realization of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant's entry into force for the States concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant" and "among the measures which might be considered appropriate, in addition to legislation, is the provision of judicial remedies with respect to rights which may, in accordance with the national legal system, be considered justiciable."

Concluding observations

All recommendations made to States on article 2 relate to the lack of steps taken towards the achievement of the rights recognised by the Covenant and the discrimination faced by certain groups, such as children with disabilities, migrant children and children from minority groups.

Progressive realisation of the Covenant does not mean that governments don't have an obligation to fulfill the rights recognised in the Covenant until a certain level of economic development is reached but rather that there will be continual

progress on the status of these rights and therefore States should take deliberate steps immediately and in the future towards the full realisation of the rights recognised in the Covenant. Governments, regardless of the level of resources they have at their disposal, must take immediate steps within their means towards the fulfilment of these rights.

On the issue of progressive realisation, the CRC, in its article 4 explains that "States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation."

The principle of progressive realisation of economic, social and cultural rights has sometimes made it difficult to link deprivations of rights to policy failures, limiting the avenues to hold governments accountable for violations of these rights. It is important to remind States that all steps taken, including legal reform and the provision of judicial remedies, not only should apply to children but must also take into account their special needs and vulnerabilities. Children's access to economic, social and cultural rights should be a priority.

Article 3 - Gender and equality

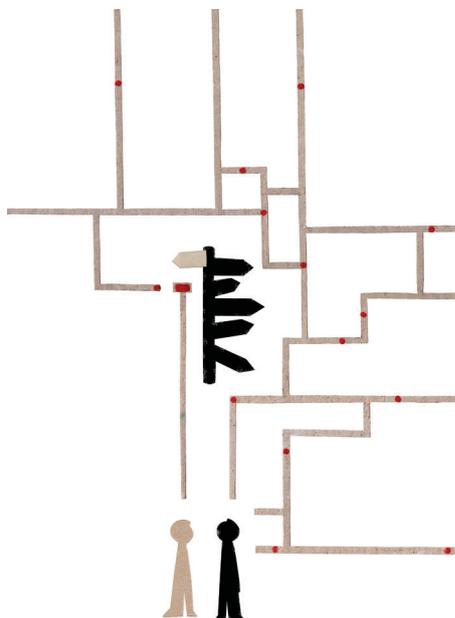
The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

General comments

According to paragraph 21 of General Comment 16 on the equal rights of men and women, addressing the obligation to fulfil, the Committee stipulates that this includes the "Development of monitoring mechanisms to ensure that the implementation of laws and policies aimed at promoting the equal enjoyment of economic, social and cultural rights by men and women do not have unintended adverse effects on disadvantaged or marginalised individuals or groups, particularly women and girls."

The Committee furthermore emphasises that equality of participation must stretch to schools and other educational programmes. Paragraph 27 addresses marriages, and the obligation to ensure that all people enter into marriages freely. It also reminds States of the prohibition on child marriage, and that the legal age for marriage should be the same for all.

In paragraph 30, the Committee considers article 13 of the



Covenant which requires States parties to recognise the right of everyone to education, noting that primary education shall be compulsory and available free to all. State parties are therefore required to adopt legislation and policies to ensure the same admissions criteria for boys and girls in all levels of education.

Moreover, “States parties should ensure, in particular through information and awareness raising campaigns, that families desist from giving preferential treatment to boys in sending their children to school, and that curricula promote equality and non-discrimination. States parties must create favourable conditions to ensure the safety of children, in particular girls, on their way to and from school.”

Concluding observations

Almost all concluding observations around children’s rights focus on issues relating to discrimination against girls: sex-selective abortion,² violence against girls, including domestic violence, harmful traditional practices (FGM and early and forced marriage, for example), trafficking of girls, persistence of stereotypes and patriarchal attitudes that discriminate against girls and lead to their inferior status in society, and high rates of sexual violence and exploitation.

Discrimination against boys has received less attention from the Committee. Egypt’s high rate of school dropout among boys was highlighted.³ In Germany and Japan, the Committee raised the issue of gender stereotypes and the need to encourage boys and girls, through education, to pursue

fields other than those traditionally dominated by either sex.⁴ During its review of the Netherlands’ country report, the Committee noted that boys face discrimination in all the islands of the former Netherlands Antilles, which affects their education.⁵

While it is true that girls face discrimination on a larger scale globally, boys are also subjected to some forms of gender discrimination.

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 report⁶ 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.

Sexual exploitation of boys in Afghanistan, in particular the practice of “bacha bazi” (literally boy play) in which boys are “owned” for dancing and sex, is one of the least talked about abuses in the country.⁷

Additionally, the Covenant is a living document and must take into account emerging issues and debates in the field of gender identity and less rigid gender roles. The rights violations affecting transgender and intersex children are particular in that they arise from discrimination on the basis of their actual or perceived gender identity. Transgender children face obstacles in being identified in official documents by their chosen name and gender. Intersex children face violations of their autonomy and bodily integrity, as surgery is routinely performed to ‘correct’ their genitalia at an age when they are too young to give or refuse consent.⁸

Article 4 - Restrictions and limitations

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by

4 See Germany, 2011, E/C.12/DEU/CO/5 and Japan, 2013, E/C.12/JPN/CO/3.

5 See Netherlands, 2010, E/C.12/NLD/4-5.

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

7 IRIN, “Afghanistan’s dancing children”, published on 18 September 2013, available at: <http://www.irinnews.org/printreport.aspx?reportid=98776>.

8 Organisation Internationale des Intersexués Australia, Position Statement on Genital Cutting, March 2010, available at: https://oii.org.au/wp-content/uploads/2010/01/oii_position_statement_genital_cutting.pdf.

2 See Albania, 2013, E/C.12/ALB/CO/2-3 and Armenia, 2014, E/C.12/ARM/CO/2-3.

3 See Egypt, 2000, E/C.12/1/Add.44.

law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Recommendations issued to States make no explicit reference to children.

States must ensure that any restriction on these rights under the Covenant is not exclusive to children, and is necessary, legitimate and proportionate to the aim pursued. Yet in some places limitations apply only to children. Children can be hit by adults in many countries as a form of correction – a practice which is called assault when applied to adults and punishable by law. In many countries, children with mental health difficulties can be locked up on grounds which would not be applied to adults.⁹

Article 5 - The rights under the Covenant 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 to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

Recommendations issued to States make no explicit reference to children.

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.

Article 5 serves as a safety clause, first to restrict the scope and the potential abuses of article 4 and secondly to prevent States from undermining more protective regimes resulting from other sources than the Covenant.

Through the interpretation of the safety clause, the Committee can remind States that limitations to obligations under the Covenant should not be exclusive to children. The Committee must also remind States of stronger protections afforded to children by other treaties, including, but not limited to, the CRC.

Article 6 - Rights to work

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

General comments

General Comment 18 addresses the right to work - a “fundamental right” according to the Committee. The Committee refers to General Comment 14 on children’s right to health, and emphasises the need to protect children from all forms of work that are likely to interfere with their development or physical or mental health. The Committee also reaffirms the need to protect children from economic exploitation or forced labour. Moreover, States parties must take effective measures to prohibit the labour of children under the age of 16 (para 24).

Concluding observations

Most recommendations issued focus on high unemployment rates among youth. During Germany’s review, the Committee raised the issue of gender stereotypes and the need to encourage boys and girls, through education, to pursue fields other than those traditionally dominated by either sex.¹⁰ During the review of Yemen’s country report, the Committee noted the discrimination regarding access of women and girls with



⁹ For more examples of age discrimination read CRIN’s guide on discrimination and the Convention on the Rights of the Child, available at: <https://www.crin.org/en/guides/introduction/discrimination-and-crc>

¹⁰ Germany, 2011, E/C.12/DEU/CO/5

disabilities to employment.¹¹

Not all working children perform activities that can be defined as child labour; yet there is a dominant view that all child work is somehow problematic. Children work for different reasons, while some choose to do so for their own development or to help support their family, others are duped into abusive labour - particularly in the sex trade - by traffickers who promise them a better life in a faraway land, or are sold or given up by their family out of poverty.

According to the International Labour Organisation (ILO): “there are 75 million young persons aged 15 to 24 years of age who are unemployed and many more who must settle for jobs that fail to offer a fair income, security in the workplace, social protection or other basic decent work attributes.”¹² In a working paper on “Promoting youth employment through activation strategies”, the ILO explains that “reducing youth unemployment in the long run often requires a range of structural reforms in areas such as labour market regulations and institutions as well as in the education system.”¹³

Article 7 - Just and favourable conditions of work

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;
(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

The Committee is in the process of developing a general comment on article 7.

Concluding observations

The Committee has made recommendations on a broad range of issues, such as child labour including in agriculture,¹⁴ abuse of domestic workers¹⁵ and children working and living in the street, forced labour, the formation of school gangs as a result of child labour, urban violence and youth unemployment,¹⁶ child trafficking, and sexual exploitation.

The most recent ILO global child labour estimates for the year 2012 show that “despite important progress there are still 168 million children worldwide trapped in child labour, accounting for almost 11 per cent of the overall child population. Children in hazardous work that directly harms their health, safety or moral development make up more than half of all child labourers, numbering 85 million in absolute terms.”¹⁷

The Committee has repeatedly called on States to step up efforts to end all forms of abuse and exploitation of children in the labour market. But it is crucial to further highlight the need to secure children, in addition to the special protection they need, all the guarantees provided for in article 7 including by establishing a minimum age of admission into employment, ensuring regulation of working hours and conditions, and applying appropriate penalties and other sanctions in cases of non-compliance. It should also be recognised that some children want to, or have to, work, and governments should therefore formalise and regulate their labour activities in order to grant them the same labour and rights protections as their adult counterparts. Of course, this approach should exclude labour activities that are dangerous, harmful or hazardous or interfere with their development.¹⁸

Article 8 - Right to form and join trade unions

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
(b) The right of trade unions to establish national federations

¹¹ Yemen, 2011, E/C.12/YEM/CO/2

¹² International Labour Organisation, World Report on Child Labour 2015: Paving the way to decent work for young people, 10 June 2015, available at: http://www.ilo.org/ipcc/Informationre-sources/WCMS_358969/lang-en/index.htm.

¹³ International Labour Organisation, Promoting youth employment through activation strategies, employment working paper No. 163, 2014, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_322411.pdf

¹⁴ See Ecuador, 2012, E/C.12/ECU/CO/3.

¹⁵ See Benin, 2008, E/C.12/BEN/2.

¹⁶ See El Salvador, 2006, E/C.12/SLV/CO/2.

¹⁷ International Labour Organisation, World Report on Child Labour 2015: Paving the way to decent work for young people, 10 June 2015, available at: http://www.ilo.org/ipcc/Informationre-sources/WCMS_358969/lang-en/index.htm.

¹⁸ CRIN, Child labour and protecting working children, 8 June 2015, available at: <https://www.crin.org/en/home/what-we-do/crinmail/crinmail-1432#CL>.

or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

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 apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

The Committee has made no mention of children's rights in its recommendations under article 8.

The CRC, in its article 15 sets out children's right to freedom of association and peaceful assembly. This includes the right to form and join associations.

Child workers should be allowed to form trade unions to defend themselves against economic exploitation at work, participate in legal reform, represent their interests with employers and help protect them against economic exploitation.

General Comment 12 of the Committee on the Rights of the Child on children's right to be heard explains that "working children have a right to be protected by law against exploitation and should be heard when worksites and conditions of work are examined by inspectors investigating the implementation of labour laws. Children and, if existing, representatives of working children's associations should also be heard when labour laws are drafted or when the enforcement of laws is considered and evaluated."¹⁹

Article 9 - Right to social security

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

General comments

In General Comment 19 on the right to social security, the Committee makes particular reference to children in a number of sections. It emphasises, in paragraph 18, that "[b]enefits for families are crucial for realising the rights of children and adult dependents to protection". The State party must therefore consider the resources and circumstances of a child, and the person responsible for that child, when assessing an application for benefits. Family and child benefits must be given without discrimination, and would ordinarily cover food, clothing, housing, water and sanitation, or other rights as appropriate.

In respect of maternity (para.19), the Committee explains that medical benefits should be provided for women and children where necessary, including perinatal, childbirth and postnatal care and care in hospital.

Regarding orphans (para.21), States parties must provide benefits where appropriate, and without discrimination, "particularly when endemic diseases, such as HIV/AIDS, tuberculosis and malaria, leave large numbers of children or older persons without family and community support".

The Committee emphasises that, while everyone has the right to social security, special attention should be given to "those individuals and groups who traditionally face difficulties in exercising this right", such as children (para. 31).

Concluding observations

The Committee raised a number of violations of article 9 relating to inadequate or lack of provision of social security benefits for the most disadvantaged, access to benefits for certain groups such as migrant children²⁰ and children with disabilities,²¹ the high number of children living below the poverty line as a result of scant social security payments²² and effective implementation of social protection laws.²³

Many countries have recently introduced austerity measures which have a big impact on children's enjoyment of their rights, and children suffer disproportionately from poverty. States should look at the structures that create poverty and revisit relevant government policies and budget allocations to fulfill children's right to social security and an adequate standard of living. A rights-based approach to decisions about resource allocation is critical because it tackles the structural

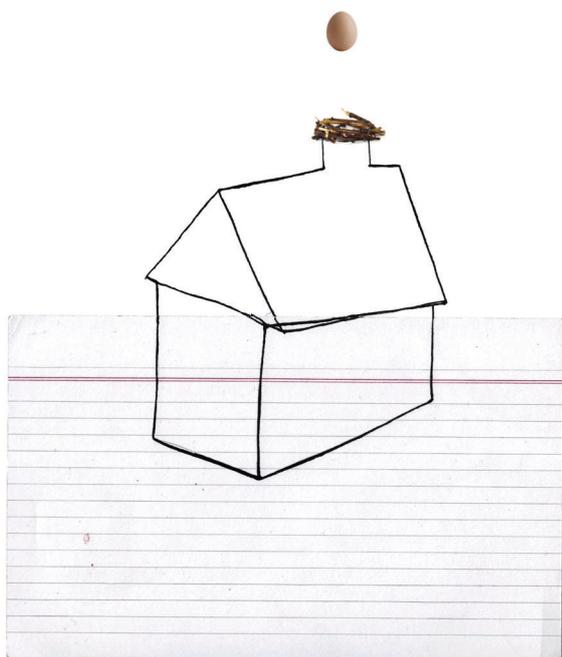
¹⁹ UN Committee on the Rights of the Child, General comment No. 12: The Right of the Child to be heard, 20 July 2009, CRC/C/GC/12, available at: <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC-C-GC-12.pdf>.

²⁰ See Argentina, 2011, E/C.12/ARG/CO/3.

²¹ See Turkmenistan, 2011, E/C.12/TKM/CO/1.

²² See Germany, 2011, E/C.12/DEU/CO/5.

²³ See Montenegro, 2014, E/C.12/MNE/CO/1.



causes of rights violations, instead of blaming individuals for being poor or bestowing help out of charity.²⁴

Article 10 - the family and protection of its members

The States Parties to the present Covenant recognize that:

- 1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.*
- 2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.*
- 3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.*

Concluding observations

The Committee has made recommendations on a broad range of issues, including domestic violence, corporal punishment in the family and alternative care settings, forced and early marriage, child recruitment, child trafficking, psychological violence, sexual abuse, children accused of witchcraft, the high rate of institutionalisation of children and FGM.

The long list of violations of children's rights within the family raised by the Committee highlights the need to protect children, as individual rights holders, from abuse committed within family settings.

In light of the recent debates around the issue of rights relating to the family, States must be urged to protect the rights of individuals within the family, including from violations of their rights by other members of their family. It is also important to remind States of the need to recognise the existence of various forms of family and families deemed 'untraditional' must be protected against discrimination.²⁵ The Committee must highlight that the family is not a rights holder. It is the individual that is a holder of rights and it is the individual that may face or commit serious abuses within the family which the State has a responsibility to address. For many children, it is the family unit that can be the most significant barrier in achieving basic rights.

Article 11 - Adequate standard of living

- 1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.*
- 2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:*
 - (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;*

²⁴ CRIN, Investment in Children, submission to the 2014 report of the High Commissioner for Human Rights, October 2014, available at: <https://www.crin.org/en/home/what-we-do/policy/investment-children>.

²⁵ A controversial resolution on the 'protection of the family' was adopted by the Human Rights Council in July, despite considerable [discussion](#) and opposition by States and civil society organisations. Proposed by Egypt, the resolution seeks to divert the council's institutional mandate, focused on the effective promotion and protection of the human rights of the individual, towards protecting the purported rights of a social institution, namely, "the family".

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

General comments

General Comment 4 explains that adequate housing is a right which, if violated, has particularly devastating consequences for children and other vulnerable groups. Paragraph 8(a) emphasises the importance of accessibility, and stipulates that disadvantaged groups such as children “should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups”. State obligations, according to the Committee, include substantiating the right of all to secure a place to live in peace and dignity.

In addition to accessibility, the Committee has identified six other key elements that comprise the right to adequate housing: legal security of tenure; availability of service materials, facilities and infrastructure; affordability; habitability; location; and cultural adequacy.

The Committee also emphasises that the right to adequate housing is linked to other rights which must also be fulfilled, protected and respected, including the right to participate in public decision-making (para 9). The right to participate is contained within article 12 of the Convention on the Rights of the Child (CRC).

In General Comment 7, the Committee elaborates obligations in respect of forced evictions, noting in particular that children are among those vulnerable groups who suffer disproportionately from the practice.

The Committee explains in General Comment 12 that the human right to adequate food is clearly one that applies to everyone, particularly vulnerable groups such as children. According to the Committee, “physical accessibility implies that adequate food must be accessible to everyone, including physically vulnerable individuals, such as infants and young children, elderly people, the physically disabled, the terminally ill and persons with persistent medical problems, including the mentally ill” (para. 3). The Committee notes that victims of natural disasters, people living in disaster-prone areas and other notably disadvantaged groups may need special attention, while indigenous groups, whose access to their ancestral lands may be threatened, might be especially vulnerable.

Concluding observations

The Committee has urged action from States on a broad range of issues including forced evictions, poverty, access to drinking water and waterborne diseases, poor sanitation, food insecurity and malnutrition, reconstruction needs after natural disasters, undocumented migrant children’s access to shelter, homeless children, cuts in family benefits²⁶ and access to social housing by disadvantaged children.

States must inform and involve children about changes to the environment they live in and reflect their views and experiences as individual human beings, rights holders and equal, active citizens. Children’s participation in urban planning allows them to express their views about what their community needs in order to be more child friendly and for all services to be accessible to children. This unique perspective of children should be taken into account in decisions made by the government and municipalities.²⁷

Paediatric obesity is now recognised as a major medical and health problem all over the world. Researchers have found that children who are obese have a higher risk of becoming obese as adults, which is strongly associated with many serious medical complications that impair quality of life and lead to additional increased health risks. Obesity reduces overall well-being of children.²⁸ World Health Organization figures suggest that up to 177 million children worldwide are threatened by obesity-related diseases, and it is predicted that 2.3 billion people over 15 years old will be overweight by 2015.²⁹



²⁶ See Spain, 2012, E/C.12/ESP/CO/5.

²⁷ Read more in CRIN, CRIN Review Children’s Right to the City, No.22, September 2008, available at: http://crin.org/docs/CRIN_review_22_final.pdf

²⁸ Council of Europe, Forum on eating at school - making healthy choices, Strasbourg, 20-21 November 2003, summary of proceedings available at: http://www.coe.int/t/e/social_cohesion/soc-sp/Final%20PROCEEDINGS%20Eating%20at%20schools.pdf

²⁹ BBC, “Junk food advert code launched”, published 15 March 2008, available at: <http://news.bbc.co.uk/2/hi/health/7297084.stm>.

Article 12 - Right to health

1. *The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*

2. *The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:*

(a) *The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;*

(b) *The improvement of all aspects of environmental and industrial hygiene;*

(c) *The prevention, treatment and control of epidemic, endemic, occupational and other diseases;*

(d) *The creation of conditions which would assure to all medical service and medical attention in the event of sickness.*

General comments

The Committee, in General Comment 5, identifies children with disabilities as being especially vulnerable to exploitation, abuse and neglect. It also emphasises that children with disabilities must be provided with the same level of medical care within the same system as other members of society (para 34).

The Committee makes quite extensive reference to children in elaborating the content of the right to health within General Comment 14. It states that the right to health includes, for example, ensuring physical accessibility, and ensuring that health facilities, goods and services are within safe physical reach for all sections of the population, especially vulnerable or marginalised groups such as children. The Committee also develops State obligations in respect of the right to maternal, child and reproductive health (para 14), emphasising that these obligations should be a particular priority (para 44).

There is reference to obligations regarding non-discrimination under the Convention on the Rights of the Child in paragraph 22. The Committee emphasises that the “Implementation of the principle of non-discrimination requires that girls, as well as boys, have equal access to adequate nutrition, safe environments, and physical as well as mental health services”.

The Committee also observes that there is a need to abolish harmful traditional practices affecting the health of children, particularly girls, including early marriage, female genital mutilation, preferential feeding and care of male children. States must ensure that harmful social or traditional practices do not interfere with access to pre- and post-natal care and

family-planning; that third parties are prevented from coercing women to undergo traditional practices; and that measures are taken to protect all vulnerable or marginalised groups in society, in particular women, children, adolescents and older persons, in the light of gender-based expressions of violence (para 35).

Adolescents, specifically, are considered in paragraph 23. They must be furnished with a safe and supportive environment, and have “the opportunity to participate in decisions affecting their health, to build life-skills, to acquire appropriate information, to receive counselling and to negotiate the health-behaviour choices they make”. It is also emphasised that the right to health is “dependent on the development of youth-friendly health care, which respects confidentiality and privacy and includes appropriate sexual and reproductive health services”.

The best interests of the child must be a primary consideration in respect of all policies and programmes addressing the right to health (para 24). In paragraph 35, the Committee considers the obligation to protect, noting that this includes ensuring that privatisation of the health sector does not threaten the availability, accessibility, acceptability and quality of health facilities, goods and services.

Concluding observations

The Committee has urged action from States on a broad range of issues including on the inadequacy of budgetary allocations to health care; infant and under five mortality; access to health care services, in particular in rural areas and children of minority groups and children with disabilities; access to sexual and reproductive health services and education; teenage pregnancy; illegality of abortion leading to unsafe termination of pregnancies; malnutrition; the decision to sterilise a child might be made by their legal representative,³⁰ HIV/AIDS, use of toxic agro-chemicals, hygiene and water related diseases, obesity and tobacco, alcohol and drug consumption among young people.

Children are entitled to be actively involved in their own health care from the earliest possible age. States must recognise the value of a child’s views and the need to give them weight in accordance with the age and maturity of the child. The Committee should reject strict age requirements with regards to children’s health-care rights and urge States to adopt a more flexible approach that takes account of individual characteristics of the child. Children should be listened to, their views should be taken seriously and their right to privacy and respect for confidentiality should be recognised.³¹

³⁰ See Finland, 2014, E/C.12/FIN/CO/6.

³¹ CRIN, Submission to the Office of the High Commissioner for Human Rights (OHCHR) Study on Children’s Right to Health, October 2012, available at: http://www.ohchr.org/Documents/Issues/Children/Study/RightHealth/Child_Rights_International_Network_CRIN.pdf

Regarding children's access to drug treatment and harm reduction services, UN policy has coalesced around the idea of drug dependence as "a multi-factorial health disorder that often follows the course of a relapsing and remitting chronic disease",³² a problem requiring a health response rather than recourse to the criminal justice system. Young people are excluded from harm reduction services in every region of the world with very few youth friendly needle and syringe exchange programmes (NSP) or opioid substitution therapy (OST) programmes.

Removing the barriers caused by legal age restrictions and rules of confidentiality should be a priority, especially in those regions of the world where growing HIV rates are attributed to injecting drug use. Removing such restrictions is an important first step towards developing youth-focused services, where children can make an informed decision as to which treatment is most suitable.

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. Debate over the practice and legality of male circumcision has spread to Norway,³³ the Netherlands³⁴ and Denmark.³⁵ The CRC in its Concluding Observations to Israel in 2014 expressed "concern about reported short and long-term complications arising from some traditional male circumcision practices" and recommended that Israel "undertake a study on the short and long-term complications of male circumcision."³⁶ In 2013, the Council of Europe adopted a resolution on children's right to physical integrity, including the circumcision of young boys for religious reasons as one of the worrisome violations of the physical integrity of children.³⁷

Article 13-14 - Right to education

Article 13: 1. *The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of*

the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. *The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:*

(a) *Primary education shall be compulsory and available free to all;*

(b) *Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;*

(c) *Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;*

(d) *Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;*

(e) *The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.*

3. *The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.*

4. *No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.*

Article 14: *Each State party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.*

32 UNODC, WHO (2008). Discussion paper, principles of drug dependence treatment. Geneva: UNODC, WHO Introduction.

33 BBC, "Tensions continue over circumcision debate", 3 November 2011, available at: <http://www.crin.org/resources/infoDetail.asp?ID=26547>

34 CRIN, "Norway: Ombudsman proposes setting minimum age for male circumcision", 2 September 2011, available at: <http://www.crin.org/resources/infodetail.asp?id=25991>.

35 CRIN, "Denmark: Plan to ban all circumcision", 20 November 2008, available at: <http://www.crin.org/violence/search/closeup.asp?infoID=19016>.

36 UN Committee on the Rights of the Child, Concluding observations on the second to fourth periodic reports of Israel, 4 July 2013, CRC/C/ISR/CO/2-4, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/ISR/CO/2-4&Lang=En

37 Council of Europe, Children's right to physical integrity, Parliamentary Assembly Resolution 1952 (2013), 1 October 2-13, available at: <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=20174&lang=en>

General comments

General Comment 11 is important because it addresses, extensively, the provision of primary education. The Committee states that the right to education “has been variously classified as an economic right, a social right and a cultural right. It is all of these. It is also, in many ways, a civil right and a political right, since it is central to the full and effective realisation of those rights as well”. The Committee also emphasises the need for plans of action, noting that educational attainment is linked to poverty, exploitation and child marriages.

In particular, the Committee states that primary education must:

- Be compulsory
- Be free of charge

Particular regard should also be directed towards indirect costs, such as compulsory levies on parents or the obligation to wear a relatively expensive school uniform.

- Include the adoption of a detailed plan

According to the Committee, the plan must be “sufficiently detailed so as to ensure the comprehensive realisation of the right”, and subject to review.

- Comply with obligations

A State party cannot escape the obligation to adopt a plan of action on the grounds that the necessary resources are not available. Where a State party lacks financial resources and/or expertise, the international community has an obligation to assist.

- Progressive implementation

Implementation must be “within a reasonable number of years” and the time-frame must “be fixed in the plan”. The State party’s other obligations, such as non-discrimination, are required to be implemented fully and immediately.

According to the Committee, article 13, the longest provision in the Covenant, “is the most wide-ranging and comprehensive article on the right to education in international human rights law” (para 1).

General Comment 13 addresses article 13 of the Covenant that states that education must be available (particularly in sufficient quantities), accessible (for example offered on a non-discriminatory basis), acceptable (of good quality, culturally appropriate, etc.), and adaptable (so it can respond to the changing needs of society, for example).



The Committee outlines the obligations on States in respect of different levels of education: primary; secondary; technical and vocational; higher; and ‘fundamental’ (basic) education. Paragraph 28 includes discussion of article 13 on the right to educational freedom. While recognising State obligations under article 13 to respect the liberty of parents and guardians to ensure the religious and moral education of their children, the Committee argues that public school instruction in subjects such as the general history of religions and ethics must be given “in an unbiased and objective way, respectful of the freedoms of opinion, conscience and expression”.

In respect of non-discrimination, the Committee, in paragraph 31, emphasises that the prohibition “is subject to neither progressive realisation nor the availability of resources; it applies fully and immediately to all aspects of education and encompasses all internationally prohibited grounds of discrimination”.

Regarding discipline, the Committee argues that corporal punishment is “inconsistent with the fundamental guiding principle of international human rights law...the dignity of the individual”. Other aspects of school discipline may also be inconsistent with human dignity, such as public humiliation (para 41).

According to the Committee, progressive realisation means that States parties have a specific and continuing obligation “to move as expeditiously and effectively as possible” towards the full realisation of article 13” (para 44).

Concluding observations

The Committee has urged action from States on a broad range of issues including access to education for girls, children with disabilities, children living in remote and urban areas; high drop-out rates among girls, migrant children and minority children; access to education in the language of minority groups; poor quality of education; low rates of secondary schools attendance; discrimination against indigenous children, children from ethnic groups and minority children; human rights education and sexual and reproductive health education; sexual abuse in school;³⁸ bullying; cuts to education budgets; corporal punishment and privatisation of higher education.³⁹

LGBTQI children face discrimination on the basis of their actual or perceived sexuality or gender identity. They are more likely to be bullied at school than their peers, with schools in some cases being accused of inaction or teachers even playing an active role in their treatment. Sex education in schools has yet to be fully inclusive of the information needs of LGBTQI children, which denies them the chance to

³⁸ See Ecuador, 2012, E/C.12/ECU/CO/3.

³⁹ See Indonesia, 2014, E/C.12/IDN/CO/1.

explore their own health, identity and relationships.⁴⁰ In the last decade, policies that involve some level of education privatisation have become increasingly prominent in global education debates and policies. The Global Campaign for Education explains that “the urgent need to achieve the Education For All goals and the MDGs, as well as the effects of the financial crisis worldwide, has made governments and international organisations more willing to introduce different forms of education privatisation. At the same time, the private sector is increasingly targeting public education systems as profitable markets, seeing business (and profit) opportunities through the sale of textbooks, consultancies, ICT technologies, teacher training, evaluation systems, tests, etc. This new push for private sector engagement in education is arguably shrinking the space for public processes of policy making and debate, sidelining citizens as the key drivers of policy while private corporations and organisations become more dominant.”⁴¹ In his report submitted to the UN General Assembly in 2014, the Special Rapporteur on the right to education examined the issue emphasising “the need to preserve education as a public good and to ensure that it is not commercialized”. He also underlined that privatisation “can have a crippling effect on the fundamental principle of equality of opportunity in education. Privatization often excludes marginalized groups, who are unable to pay, undermining the right of universal access to education.[...] States remain primarily responsible for providing education on account of their international legal obligations. They should not abandon their primary responsibility, above all for the provision of free and quality basic education, to the advantage of private providers, who find the inadequacies of public education fertile ground for making money from the provision of education, reaping uncontrolled profits.”⁴²

Article 15 - Cultural and intellectual property rights

1. *The States Parties to the present Covenant recognize the right of everyone:*
 - (a) *To take part in cultural life;*
 - (b) *To enjoy the benefits of scientific progress and its applications;*
 - (c) *To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.*
2. *The steps to be taken by the States Parties to the present*

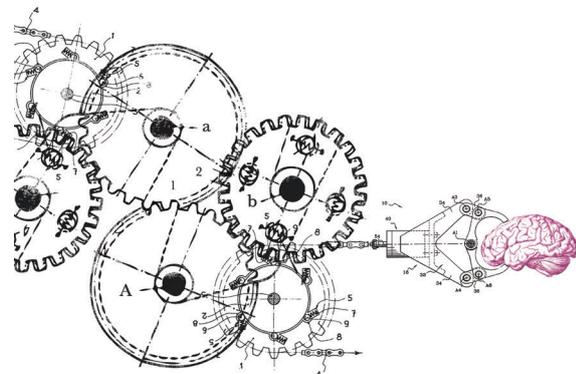
- Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.*
3. *The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.*
4. *The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.*

General comments

In General Comment 21, the Committee emphasises that cultural rights are integral, stating that: “The full promotion of and respect for cultural rights is essential for the maintenance of human dignity and positive social interaction between individuals and communities in a diverse and multicultural world.”

While article 17 of the Convention on the Rights of the Child, concerning access to appropriate media, is relevant, article 31 explicitly provides for the right of the child to leisure, play and participation in cultural and artistic activities. In the General Comment, paragraphs 26 and 27 are particularly relevant for children. According to the Committee, “children play a fundamental role as the bearers and transmitters of cultural values from generation to generation. States parties should take all the steps necessary to stimulate and develop children’s full potential in the area of cultural life, with due regard for the rights and responsibilities of their parents or guardians”.

The Committee focuses in particular on the right to education, noting that the fundamental aim of educational development is the “transmission and enrichment of common cultural and moral values in which the individual and society find their identity and worth” (para. 26). It therefore states that education must be culturally appropriate, include human rights education, and “enable children to develop their



personality and cultural identity and to learn and understand

40 CRIN, Children’s Rights and LGBTI issues, 13 May 2015, available at: <https://www.crin.org/en/home/what-we-do/crinmail/crinmail-1428>

41 Global Campaign for Education, Campaign: Privatisation in Education, see campaign’s page at: <http://www.campaignforeducation.org/en/campaigns/privatisation>

42 Kishore Singh, Special Rapporteur on the right to education, report on State responsibility in the face of the explosive growth of private education providers, 24 September 2014, A/69/402, available at: http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/UNSR_Report_to_UNGA_Privatisation_2014.pdf

cultural values and practices of the communities to which they belong, as well as those of other communities and societies”.

The Committee also emphasises that schools must respect the cultural specificities of national or ethnic, linguistic and religious minorities and indigenous peoples, incorporating their history and values into the school curriculum for all pupils. Education for minorities and indigenous groups must also be conducted in their own language. In paragraph 35, the Committee recommends that States ensure that the children of migrants attend, on a basis of equal treatment, state-run educational institutions and programmes.

Concluding observations

Most recommendations issued by the Committee highlight violations related to limited access to education in minority languages in public schools and the lack of steps taken to preserve, protect and promote regional and minority languages, cultures and cultural activities.

During its review of Iceland's report in 2012, the Committee urged the State to ensure that all disadvantaged and marginalised groups and individuals, including persons with disabilities, as well as children from low-income families and migrant children, and older persons can fully enjoy their right to take part in cultural life.⁴³

The Committee expressed concern in 2006 over Mexico's reduction in the budget allocated to intercultural and bilingual education.⁴⁴

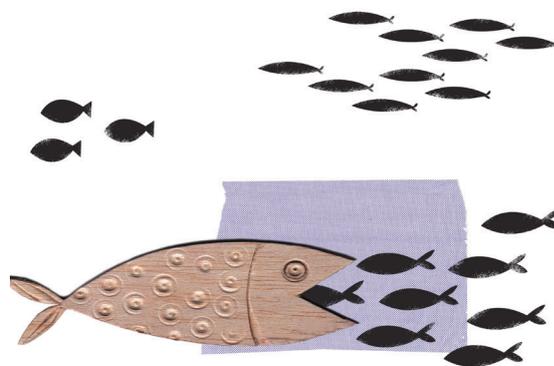
The ability of children to play and participate in cultural activities is vital to their development, quality of life and sense of community spirit. This is particularly important for children of ethnic minorities, including indigenous populations.

The CRC in its article 31 recognises children's right to rest, leisure, play, recreation and participation in cultural and artistic life.

Children's right to play has become sidelined as budget cuts impede children's access to recreational facilities; surging urban growth swallows up green spaces; adults' fears of safety - both of predators and road traffic - rein children in; and societies' emphasis on productivity prioritises work and schooling over rest and leisure pursuits.

As children do not pay taxes and cannot vote, they have unequal access to power compared with adults, an imbalance

which is reflected in expenditure on recreational facilities. This is particularly evident in times of economic stringency when children's facilities are often the first casualty.



43 See Iceland, 2012, E/C.12/ISL/CO/4.

44 See Mexico, 2006, E/C.12/MEX/CO/4.

PART VII

KEY FINDINGS AND RECOMMENDATIONS

Recommendations to the Committee

All rights in the Covenant apply to children, and some require greater protections for children than for adults to cater for their age and relative lack of maturity. It is on this basis that we have 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 child labour and youth unemployment, food insecurity, harmful traditional practices and the inadequate provision of social security benefits to bullying in schools and corporal punishment in the family and alternative care settings.

Nevertheless, the Committee sometimes fails to consider the specific implications certain rights have for children.

We therefore recommend that the Committee systematically address children's rights in its interpretation of each article of the Covenant and recognise the highest standards of protection of social, economic and cultural rights for children by, for example:

- Reminding States that, regarding the principle of progressive realisation, all steps taken, including legal reform and the provision of judicial remedies, should not only apply to children but must also take into account their unique needs and vulnerabilities. Children's access to economic, social and cultural rights should be a priority.
- Addressing the issue of discrimination on the basis of age, highlighting that when limitations to the rights recognised in the Covenant are necessary, they should not be exclusive to children;
- While stressing the need to protect children from labour activities that are dangerous, harmful or hazardous or interfere with their development, the Committee must highlight the need to secure children, in addition to the special protection they need, all the guarantees provided for adults;
- Urging States to allow and encourage children to form trade unions to represent their interests with employers, take part in legal reform and help protect them against economic exploitation;
- Reminding States that children have the right to be heard in all matters that affect them including for example in urban planning and their health care;
- Urging States not to criminalise children - and adults - 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.
- Urging States to set safeguards against the work of businesses that may obstruct the realisation of children's rights - such as the rights to health, food security and access to safe drinking water and sanitation; and
- Reminding States of their obligation to protect

children from discrimination facing both girls and boys, as well as children who identify as transgender.

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

- Following the recent attempt by some States to restrict the definition of the family, reminding States that the family is not a rights holder, 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 family exist;
- Challenging austerity measures recently adopted in a number of countries to minimise their effects on children and encourage States to allocate more resources for the realisation of children's rights under the Covenant; and
- Reminding States that they hold the primary responsibility for providing education, and when privatisation is permitted States should set conditions and standards for private education providers.

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

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 8 on the right to join and form trade unions and emerging issues such as the discrimination faced by LGBTQI children on the basis of their actual or perceived sexuality or gender identity, and austerity measures and their impact on children.

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 with regards to children's rights prior to the consideration of the State party report;
- information in person or in writing for the pre-session working group;
- oral information on the first day of each session during the time assigned for civil society organisations by the Committee.

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

AN INTERPRETATION OF CHILDREN'S RIGHTS IN THE COVENANT

Article 1: Right to self determination

All peoples have the right of self determination, including the right to determine their political status and freely pursue their economic, social and cultural development.

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 should apply equally to children.

Laws and policies which discriminate on the basis of age often exclude children from political life and don't allow them to be actively engaged in the realisation of their rights. State Parties must clearly recognise children's right to self determination in national legislation.

Articles 2-5: supporting guarantees and principle of “progressive realisation”

2 - Article 2 provides that each State Party must take steps to the maximum of its available resources to achieve progressively the full realisation of the rights in this treaty.

Everyone is entitled to the same rights without discrimination of any kind.

In its General Comment 3 on the nature of States Parties' obligations, the Committee notes that “thus while the full realization of the relevant rights may be achieved progressively, steps towards that goal must be taken within a reasonably short time after the Covenant's entry into force for the States concerned. Such steps should be deliberate, concrete and targeted as clearly as possible towards meeting the obligations recognized in the Covenant” and “among the measures which might be considered appropriate, in addition to legislation, is the provision of judicial remedies with respect to rights which may, in accordance with the national legal system, be considered justiciable.”

On the issue of progressive realisation, the CRC, in its article 4 explains that “States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.”

All steps taken, including legal reform and the provision of judicial remedies, not only should apply to children but must also take into account their special needs and vulnerabilities.

3 - Article 3 ensures the equal right of men and women to the enjoyment of all rights in this treaty.

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 - boys and girls.

4 - Article 4 provides that limitations may be placed on social, economic and cultural rights only if compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

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

5 - Article 5 provides that rights under the Covenant must not be abused by any group, individual or the State. Article 5 also prescribes that “No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.”

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.

This article serves as a safety clause, first to restrict the scope and the potential abuses of article 4 and secondly to prevent States from undermining more protective regimes resulting from other sources than the Covenant.

Article 6: Right to work

Article 6 recognises the right to work and lays down specific legal obligations on States.

The Covenant guarantees everyone's right to work, including the right to gain one's living at work that is freely chosen and accepted.

In its General Comment No.18, the Committee highlights that “the right to work is an individual right that belongs to each person and is at the same time a collective right” and that “States Parties must take effective measures, in particular legislative measures, to prohibit labour of children under the age of 16. Further, they have to prohibit all forms of economic exploitation and forced labour of children.”¹

Similarly, article 32 of the CRC establishes safeguards to protect children from economic exploitation and abuse without a blanket prohibition on work for children.

¹ <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4sIQ6Q5mlBEDzFEovLCuW1a0Szab0oXtdlmsjZZVQfUkXxXVIsd7Dae%2fCu%2b13J25Nha7I9NlwYZ%2fTmK57O%2fSr7TB2hbCAIdyVu5x7XcqiNXn44LZ52C%2blkX8AGQRvYlc>

Not all working children perform activities that can be defined as child labour; yet there is a dominant view that all child work is somehow problematic. Children work for different reasons, while some choose to do so for their own development or to help support their family, others are duped into abusive labour - particularly into the sex trade - by traffickers who promise them a better life in a faraway land or are sold or given up by their family out of poverty. Children should indeed be protected from labour activities that are exploitative, harmful to their physical and mental development, and are an affront to their dignity. But in countries where it is a given that children will work, and where the economic conditions which push children to work in the first place are expected to last, a blanket ban doesn't seem to be the best option for upholding children's interests.

Article 7: The right to enjoyment of just and favourable conditions of work

The Covenant proclaims the right to work in a general sense in its article 6 and explicitly develops the individual dimension of the right to work through the recognition in article 7 of the right of everyone to the enjoyment of just and favourable conditions of work, in particular the right to safe working conditions. More specifically, article 7 states that everyone has the right to fair wages ensuring a decent living for himself and his family, equal pay for equal work, equal opportunity to be promoted, rest and leisure.

Children are at particular risk of abuse and exploitation in the labour market. In many countries some sectors, such as agriculture, are exempt from laws and regulations governing child labour and occupational safety² leading children to be underpaid, their work undeclared and unable to access justice and remedies.

In countries where it is a given that children will work it is more beneficial for them if governments formalise and regulate their labour activities in order to grant them the same labour and rights protections as their adult counterparts. Of course, this approach should exclude labour activities that are dangerous, harmful or hazardous or interfere with their development. But when a country's circumstances mean that today's working children will continue to work with or without labour protections, it represents an interim measure before more structural changes come about.

Special attention should therefore be paid to children when applying the guarantees provided by article 7 to ensure States establish a minimum age of admission into employment, ensure regulation of working hours and conditions and apply appropriate penalties and other sanctions in cases of non-compliance, paying attention to relevant provisions of other international instruments as stressed by article 32 of the CRC.

Article 8: The right to form and join trade unions

Everyone has the right to form and join trade unions and the right to strike.

Child workers should also be allowed to form trade unions to defend themselves against economic exploitation at work, participate in legal reform, represent their interests with employers and help protect them against economic exploitation.

General Comment No. 12 of the Committee on the Rights of the Child on the children's right to be heard explains that "working children have a right to be protected by law against exploitation and should be heard when worksites and conditions of work are examined by inspectors investigating the implementation of labour laws. Children and, if existing, representatives of working children's associations should also be heard when labour laws are drafted or when the enforcement of laws is considered and evaluated."³

The CRC, in its article 15 sets out children's right to freedom of association and peaceful assembly. This includes the right to form and join associations.

Limitations to the enjoyment of this right are often more restrictive for children. In Japan, for example, children's membership in any association is contingent on parental consent until they reach 18 (CRC, concluding observations, 2005, para 23). In Lebanon, children are not allowed to join or form associations.⁴

Article 9: The right to social security

Everyone has the right to social security, including social insurance.

According to General Comment No.19⁵, this includes the right to access and maintain benefits, without discrimination in order to be protected from a lack of income due to sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member; due to unaffordable access to health care; or due to insufficient family support, particularly for children and adult dependents.

Children are more affected by poverty just as they are more affected by austerity measures and budget cuts. General Comment 19 emphasises that, while everyone has the right

3 <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhb7yhsqIkirKQZLK2M58RF%2f5F0vHKTUsoHNPBWOnoZp5p5d6MSKiT09ePYFY4cH5tmyyvg%2fzVvi%2bJDuaCgf7NB%2bqHeFDlerQVMA5D11979EtHr%2bnA>

4 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.'

5 <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4sIQ6QSmIBEDzFEovLCuW1a0Szab0oXTdlmnsJZZVQdrCvvLm0yy7YCiVA9Yy61Z8YHJWla0qOfZ9fbBAjHL%2fLI5glIsq5BbczFKYIRCH3H0ggcCKMPkxITz7NI9wE>

2 See for example <http://www.hrw.org/news/2010/05/05/us-child-farmworkers-dangerous-lives> on the child farmworkers in the US and <http://www.crin.org/resources/infoDetail.asp?ID=30216&flag=news> on forced cotton harvesting in Uzbekistan.

to social security, special attention should be given to “those individuals and groups who traditionally face difficulties in exercising this right”, such as children (para. 31).

Article 26 of the CRC recognises a child’s right to benefit from social security including social insurance. It also highlights States’ obligation to consider children as individuals in their own right when devising policies on social security, allowing them to claim financial assistance in their own right where necessary.

Article 10: The family and the protection of its members

Article 10 focuses on the protection and assistance that should be accorded to the family, including that marriage must be entered into with the free consent of both spouses and special protection should be provided to mothers.

Paragraph 3 focuses on the protection of children from economic exploitation, urging States Parties to prohibit their employment in dangerous or harmful work and to set age limits below which child labour should be prohibited. The International Labour Organisation defines child labour “as work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development.”

In General Comment No. 18 on the right to work, the Committee devotes a section to discrimination based on birth, prohibited in Article 10. It emphasises that discrimination based on parentage should be prohibited, particularly in respect of those who are born out of wedlock, born of stateless parents or are adopted or constitute the families of such persons (para. 26).

The family is a very important social structure. All different types of family structures can successfully raise a child, and there is no “one-size fits all” definition.

The State must protect the child from violence, abuse and neglect, including when this occurs in the home. The priority should be given to keeping the child in the family home. No child should be removed from their family home by State intervention without very good reason, and after considering all views, including the child’s, in light of what is in the child’s best interests.

Article 11: The right to an adequate standard of living

Everyone has the right to an adequate standard of living for himself and his family, including adequate food, clothing and housing. Everyone has the right to be free from hunger.

Adequate housing is a right which, if violated, has particularly devastating consequences for children and other vulnerable groups. The Committee in its General Comment No. 4 on adequate housing emphasises the importance of accessibility, and stipulates that disadvantaged groups such as children

“should be ensured some degree of priority consideration in the housing sphere. Both housing law and policy should take fully into account the special housing needs of these groups”. State obligations, according to the Committee, include substantiating the right of all to secure a place to live in peace and dignity.

The human right to adequate food, within article 11 of the Covenant, is clearly one that applies to everyone, particularly vulnerable groups such as children. According to the Committee in General Comment No. 12, “physical accessibility implies that adequate food must be accessible to everyone, including physically vulnerable individuals, such as infants and young children, elderly people, the physically disabled, the terminally ill and persons with persistent medical problems, including the mentally ill”.

According to the Committee in General Comment No. 15, the right to water is implicit within article 11. Article 24(2), paragraph 2, of the CRC is in fact more explicit, requiring States parties to combat disease and malnutrition “through the provision of adequate nutritious foods and clean drinking-water”.

Returning to the Covenant, the Committee explains that water is fundamental for life and health, and that the human right to water is therefore “indispensable for leading a life in human dignity” (para.1), and a prerequisite for the realisation of other human rights. Children and other vulnerable groups should be given particular attention, according to the Committee (para. 6), and they should, in particular, not be denied access to adequate water in educational institutions or through the burden of collecting water.

Article 27 of the CRC establishes children’s right to an adequate standard of living to ensure their physical, mental, spiritual, moral and social development.

The Committee on the Rights of the Child’s [general comment on early childhood](#) recognises that children’s rights are largely dependent on the wellbeing and resources available to those responsible for them. It therefore promotes interventions for parents and guardians which reflect children’s best interests such as provision of benefits, adequate housing, reasonable working hours and parental education.

Article 12: The right to enjoyment of the highest attainable standard of health

Everyone has the right to the enjoyment of the highest attainable standard of physical and mental health.

In its General Comment No. 14, the Committee makes quite extensive reference to children in elaborating the content of the right to health. It states that the right to health includes, for example, ensuring physical accessibility, and ensuring that health facilities, goods and services are within safe physical reach for all sections of the population, especially vulnerable or marginalised groups such as children. The Committee also develops State obligations in respect of the right to maternal,

child and reproductive health (para 14), emphasising that these obligations should be of particular priority (para 44).

The Committee also observes that there is a need to abolish harmful traditional practices affecting the health of children, particularly girls, including early marriage, female genital mutilation, preferential feeding and care of male children.

According to the Committee, adolescents, specifically, must be furnished with a safe and supportive environment, and have “the opportunity to participate in decisions affecting their health, to build life-skills, to acquire appropriate information, to receive counselling and to negotiate the health-behaviour choices they make”. It is also emphasised that the right to health is “dependent on the development of youth-friendly health care, which respects confidentiality and privacy and includes appropriate sexual and reproductive health services”.

Article 24 of the CRC asserts all children’s right to the highest attainable standard of health and to be able to access facilities for the treatment of illness and rehabilitation.

Children’s right to health means more than the bare bones of survival. It means being able to access confidential health services and the protection of privacy (particularly important when a child is being abused in the home, or needs sexual and reproductive health services and advice). It also means being able to access information so they can make choices about their own bodies and minds and give informed consent; as well as being able to access remedies when their right to health is violated.

Article 13 and 14 : The right to education

Everyone has the right to education, and the State’s duty is to ensure that primary education is free and compulsory, to encourage different forms of secondary education accessible to every child and to make higher education available to all on the basis of capacity.

Those States where compulsory, free primary education is not available to all should work out a plan to provide such education.

Under the Covenant, there are two articles devoted to the right to education, articles 13 and 14. According to the Committee in General Comment No.13, article 13, the longest provision in the Covenant, “is the most wide-ranging and comprehensive article on the right to education in international human rights law”.

The General Comment, includes general observations about the importance of education, as well as more in-depth guidance. In respect of the right to receive an education, under article 13, the Committee states that education must be available (particularly in sufficient quantities), accessible (for example offered on a non-discriminatory basis), acceptable (of good quality, culturally appropriate etc), and adaptable (so it can respond to the changing needs of society, for example).

Regarding discipline, the Committee argues that corporal punishment is “inconsistent with the fundamental guiding principle of international human rights law...the dignity of the individual”. Other aspects of school discipline may also be inconsistent with human dignity, such as public humiliation.

The Committee must urge States to focus on children’s access to education, the quality of the education received and the promotion of the respect of children’s rights within the curriculum and the school’s policies.

Access to education has been the focus of many campaigns in relation to education. It mostly implies equal access for girls and ending bias on grounds of race, colour, social origin, sexuality, HIV-status, pregnancy and so on.

But it should not stop at children’s access to education; States should take all necessary steps to ensure children’s rights are also realised once they are inside the school. They should focus on the right to a good quality basic education that gives children necessary knowledge and skills. To achieve this, international human rights principles must be used as a framework for educational policy and practice. This means addressing all the factors that determine children’s ability to learn: health, nutritional status, well-being, safety and protection from abuse and violence.

Article 15: Cultural rights, intellectual property rights
Everyone has the right to take part in cultural life; enjoy the benefits of scientific progress.

In General Comment No. 21, the Committee emphasises that cultural rights are integral, stating that: “The full promotion of and respect for cultural rights is essential for the maintenance of human dignity and positive social interaction between individuals and communities in a diverse and multicultural world”.

According to the Committee, “children play a fundamental role as the bearers and transmitters of cultural values from generation to generation. States parties should take all the steps necessary to stimulate and develop children’s full potential in the area of cultural life, with due regard for the rights and responsibilities of their parents or guardians”.

The Committee also emphasises that schools must respect the cultural specificities of national or ethnic, linguistic and religious minorities and indigenous peoples, incorporating their history and values into the school curriculum for all pupils. Education for minorities and indigenous groups must also be conducted in their own language.

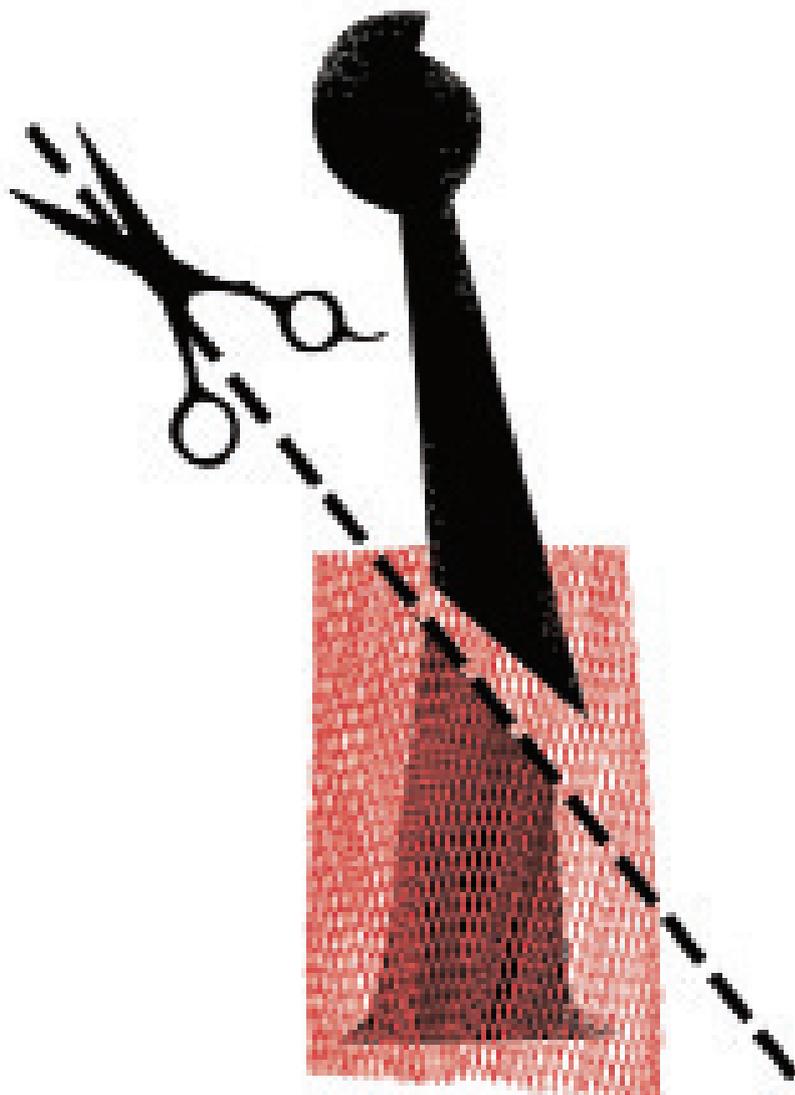
The UN Committee on the Elimination of Racial Discrimination has also issued relevant guidance in several general comments on respect for minority cultures through teacher training, curricula and textbook; it has further urged States to review language and textbooks to eliminate stereotypes, etc.

Article 29. 1 of the CRC explains that education should also be

directed to develop “respect for the child’s parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own”. In promoting respect both for minority cultures and for the country in which a child lives, this part of the article emphasises education’s role in reconciling diverse values through discussion and promoting respect for difference.

The right to cultural and artistic life requires States to ensure children’s access to and freedom to initiate or get involved in such activities.

Article 31 of the CRC protects children’s right to rest, leisure, play, recreation and participation in cultural and artistic life.



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