GLOBAL PERSPECTIVES ON CONSOLIDATED CHILDREN’S RIGHTS STATUTES

LEGISLATIVE REFORM INITIATIVE – PAPER SERIES

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Global Perspectives On Consolidated Children’s Rights Statutes

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This paper is part of the Legislative Reform Initiative – Paper Series, (LRI - Paper series) spearheaded by the Global Policy Section of UNICEF. The aim of the Paper series is to explore and provide guidance on the role of legislation – including regulations which may have a direct or indirect bearing on children – in protecting and advancing children’s rights in a particular area. The Paper Series are intended to increase understanding of the human rights-approach to legislative reform.

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Enactment of Consolidated Children’s Rights Statutes

- 61 states have enacted consolidated children’s rights statutes without express recommendations of the Committee.
- 12 State Parties have enacted consolidated children’s rights statutes in response to express recommendations of the Committee.
- 25 State Parties have yet to enact consolidated children’s rights statutes in response to express recommendations of the Committee.

Source:

Note: the boundaries and the names shown and the designations used on these maps do not imply official endorsement or acceptance by the United Nations

1 As of 2007.
Executive Summary

Context and objectives of the study

This study is inspired by General Comment 5 (2003) of the Committee of the Rights of the Child (the Committee), which deals with matters relating to General Measures of Implementation of the Convention on the Rights of the Child. The Comment spells out among things the place of consolidated children’s statutes within the overall context of legislative reforms. The study objective is to examine the extent to which consolidated statutes have featured in the law reform efforts of State parties to the Convention on the Rights of the Child (the Convention or CRC).

Key findings

The present situation

Out of a total of 193 States Parties to the CRC, an estimated 69 countries, representing 35.7% have enacted consolidated children's statutes, while an additional 31 countries, representing 16% of States parties are yet to enact such laws based upon an express recommendation of the Committee. In addition to the number of States Parties which have had their statutes passed, four other political entities which are geographically located within other States Parties to the Convention have also carried out consolidation arrangements in favour of children. These are (Goa) which is part of the Federation of India, New Foundland and Saskatchewan which are part of the Federation of Canada respectively and Jersey a Crown Colony of the United Kingdom. However, the combined total of all State parties to have enacted consolidated statutes in addition to those which are yet to do so number up to 100 representing 51.8% of States Parties to the CRC, demonstrating that consolidated children’s statutes are fast emerging as a trend in legislative reforms among States parties to the CRC.

The role of the Committee in the current global response

State party initiatives in the area of consolidated laws have been based on two different pillars. Twelve (12) States (Belize, Burkina Faso, Gambia, Haiti, Kenya, Lesotho, Libya, Mauritius, Panama, Thailand, Togo and Uzbekistan and representing 6.2% of State Parties to the CRC) enacted their consolidated laws in response to an express recommendation of the Committee. These 12 States in addition to the remaining 56 enacting States were also influenced by the general monitoring role of the Committee and other global factors and developments such as the 1990 World Summit on Children and the compelling force of the CRC as an instrument which demand that comprehensive effect must be given to the rights of the child.

General scope of statutes

Existing statutes may be broadly classified into the following three forms based upon their general thrust and specific provisions. These are general frameworks with the express or

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2 For clarity, the counting of States parties with consolidates statutes does not include these political entities. The main body of the study however does makes extensive references to these statutes in its drawing of best practices and other areas of concern.
implied intention to carry out further legislative reforms in the future. This type of framework has been adopted mainly by Eastern European countries, especially those of the former Soviet Union and some Latin American countries, all of which subscribe to the civil law tradition. The second, consisting of **frameworks based on Child Protection** have been adopted by the majority of States, belonging to a cross range of legal traditions (civil, common law, Islamic and plural). The core features of these laws relate to matters of child protection, of which child maintenance, custody, access, adoption, juvenile justice administration and varied forms of abuse and exploitation constitute common areas of concern. The third category consists of **frameworks which take account of civil and political rights in addition to economic, social and cultural rights of children.** These tend to be the more encompassing and embracing of statutes, tending to take account of a substantial portion, if not of all of the provisions of the CRC. The Latin American region accounts for the majority of such statutes, while three African countries (Gambia, Lesotho and Nigeria) - all of plural legal traditions - have been among the first in the region to undertake this kind of comprehensive process.

*Strengths and weaknesses of existing laws*

A review of the contents of the laws revealed the following strengthens and weaknesses:

**Strengths**

- Evidence of a general appreciation and integration of elements of *rights based approaches to legal reforms* in favour of children is to be seen as a significant milestone in child-related legal reforms across States. This has been expressed by the repositioning of children as *subjects of rights*, the identification of the State, community and parents as *duty bearers* towards children, and the express mention of the CRC and other *human rights standards*.

- An increase in the appreciation of the *complementary rights of women and children* and therefore the interdependent roles of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) and the CRC in achieving comprehensiveness. This has been notable for example, in the area of the right to health, where States have made provisions on *maternal health*, in some instances, providing for *compulsory breastfeeding* and the protection of *pregnant children*. Complementary to this, some country statutes contain provisions on *human rights education and gender* in the curriculum of school education, in line with the CEDAW and the CRC, affording opportunities for children to appreciate their rights and to become gender aware within formal educational systems.

- There is growing evidence of the creation of *special adjudicative bodies for children* as a means of securing *access to justice* and *due process* given their vulnerability compared to other segments of the population. Further to this, provisions have been made for different child-related courts and child-friendly procedures. Many countries also provide for *legal aid* and *alternative forms of dispute resolution*.

- An estimated number of 15 statutes contain provisions on the involvement of *children in armed conflict*. This shows a gradual but growing number of States
that have taken legal measures with respect to the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict.

- Legislative provisions exist which mandate States to maintain accurate data on records on the situation of specific groups of children thereby facilitating monitoring of the situation of children in these countries.

- Provisions which reinforce the family as the first line of protection and institutional care as a measure of last resort have gained high currency among a number of States and constitute a major breakthrough in reforms in favour of children in need of special care and protection. This is to be coupled with higher standards applied to inter-country adoptions by a great number of State Parties.

- The revelation that States have also increased protection measures to children against varied forms of abuse, neglect, exploitation and violence is also a significant observation. Many of these provisions are line with the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography, the ILO Conventions 138 and 182, and the 2000 Palermo Protocol on Human Trafficking. It is also important to note that States have set different minimum ages for different types of employment and apprenticeships based upon their particular economic and social circumstances.

- Wide acceptance of the importance of providing adequate protection to children with disabilities, with special attention paid to prevention and early detection and the ultimate objective of ensuring that the child is integrated into society and given an opportunity to lead an independent life is in line with the CRC principles and provisions.

- New dimensions on the economic rights of children consisting of their right to work under safe and fair conditions, to join trade unions, to inherit, own and manage property based on their capacity and capabilities are innovative provisions. This is to be appreciated in the light of the emergence of households managed by children due to factors such as the HIV/AIDS pandemic.

- States are increasingly recognizing the importance of legislating specifically on children in need of special care and protection. This is a positive sign of acknowledging the place and importance of child protection in the overall scheme of implementation of the CRC.

- Major strides have also been made in the area of legal reforms in the field of juvenile justice administration. Provisions on due process, diversion and quasi-judicial systems of justice are innovations which must be further studied and replicated.

Weaknesses

- Gender discriminatory provisions are observable across a few statutes in the area of parental responsibility. In some country situations fathers who are not married to the mothers of their children are required to obtain a formal judicial order as a prerequisite to the exercise of parental responsibility over their children. These
legislative provisions are seen under the study to be in contradiction with provisions of CRC, CEDAW and the Universal Declaration on Human Rights (UNDHR), all of which call for joint parental responsibility and equality of parental rights for men and women.

- Discrepancies between some state provisions on the age of admission into the armed forces and their respective declarations made with respect to Optional Protocol to the CRC on the Involvement of Children in Armed Conflict were also found to exist.

- The definition of the child in the statutes of some countries is seen as an area which must be examined further. This is in the light of the fact that article 1 of the CRC defines the child as every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier. This provision has led to situations in which children are permitted to marry before the age of 18 years. It is, however, important that the CRC provisions are read and applied in tandem with provisions of CEDAW and the Convention on Consent to Marriage, Minimum age for Marriage and Registration of Marriages.

- In some countries, the age of criminal responsibility has been identified as being too low, implying that children would be exposed to the criminal justice system at an early age and therefore not in consonance with the principles and provisions of the CRC in addition to other standards such as the UN Minimum Rules for the Administration of Juvenile Justice (“Beijing Rules”).

- While a substantial number of States have taken steps to proscribe torture and inhuman and degrading treatment and punishment, these have been tended to be negated by other provisions which permit corporal punishment, therefore demonstrating that de jure and de facto, children continue to be at risk of physical abuse.

**Key Recommendations**

The following recommendations have been made with a view to improving upon the current state of legislative reforms.

1. **The need for the Committee to clarify the scope of General Comment 5**

There are varying degrees of “consolidation” among States Parties which have engaged in the process of reforms leading to the enactment of children’s statutes. Some of these variations have been based on different interpretations of General Comment 5 by the Committee. While the Committee has adopted a case by case approach to legislative reform, it is also essential that it clarifies its criteria in developing concluding observations and recommendations for consolidated statutes to ensure a higher level of uniformity in contents of statutes and certainty in legislative reform processes.

2. **States parties to follow up on Committee recommendations**

States which are yet to enact statutes in response to an express recommendation of the Committee should be provided with technical and financial support by UNICEF to expedite
this process, while others who have received specific recommendations with regards to shortcomings in their existing statutes should also use the opportunity afforded by this study to embark upon appropriate reviews.

3. Sharing of best practices among States

The following models were identified for possible replication:

- Inter-agency approaches to implementation of the CRC by Latvia and Uzbekistan;
- Quasi-judicial approaches to juvenile justice administration by Ghana, Sierra Leone and Uganda;
- Community-based welfare monitoring approaches by countries such as Malaysia;
- Elaborate provisions on children in armed conflict by countries such as Gambia and Nigeria;
- Institutional care as a measure of last resort for both children deprived of alternative family support and children in conflict with the law in countries such as Azerbaijan.

4. Design and implementation of costing projects on a pilot basis

Based on the observation that consolidated statutes offer opportunities for costing of delivery of services to children, UNICEF is to initiate a process that would lead to the design and implementation of statute costing projects on a pilot basis. The country selection criteria should be based on those with and without consolidated frameworks so as to serve as a basis for comparison.

5. Codification and harmonisation of customary law in all countries

The Committee views the lack of or difficulty of harmonisation of customary law with the CRC as a major threat to consolidation processes of especially countries of mixed legal traditions. However, the multi-ethnic dimensions of customary law demands wide consultation and dialogue across different ethnic communities and leaders. States must be committed to carrying out the process of harmonisation of customary law with the CRC, and in so doing must take into account the anticipated financial and manpower requirements of relevant partners, such as Law Reform Commissions in order to make this effective.
Resumen Ejecutivo

Contexto y objetivos del estudio

Este estudio está inspirado en el Comentario general 5 (2003) del Comité de los Derechos del Niño (el Comité), que aborda cuestiones relacionadas con las Medidas Generales de Aplicación de la Convención sobre los Derechos del Niño. El Comentario describe entre otras cosas el lugar que deben ocupar los estatutos refundidos sobre los derechos del niño en el marco general de las reformas legislativas. El objetivo del estudio es examinar el alcance en que las actividades de reforma legislativa de los Estados Partes de la Convención sobre los Derechos del Niño (la Convención) se han reflejado en los estatutos refundidos.

Principales conclusiones

La situación actual

De un total de 193 Estados Partes de la Convención, alrededor de 69 países, que representan el 35,7%, han promulgado estatutos de la infancia refundidos, mientras que otros 31 países, que representan el 16% de los Estados Partes, no han promulgado todavía estas leyes basadas en una recomendación específica del Comité. Además del número de Estados Partes que han aprobado sus estatutos, otras cuatro entidades políticas que se encuentran geográficamente ubicadas dentro de otros Estados Partes de la Convención han llevado a cabo también disposiciones de refundición en favor de la infancia. Se trata de (Goa), que forma parte de la Federación de la India, New Foundland y Saskatchewan, que forman parte respectivamente de la Federación del Canadá, y Jersey, una corona de la colonia británica. Sin embargo, la suma del total de todos los Estados Partes que han promulgado estatutos refundidos, además de aquellos que tienen programado hacerlo, alcanza el número 100, lo que representa el 51,8% de los Estados Partes de la Convención; esto demuestra que la refundición de los estatutos de la infancia está surgiendo rápidamente como una tendencia en las reformas legislativas de los Estados Partes de la Convención.

La función del Comité en la respuesta mundial actual

Las iniciativas de los Estados Partes en la esfera de la refundición de las leyes se han basado en dos pilares diferentes. Doce (12) Estados (Belice, Burkina Faso, Gambia, Haití, Kenia, Lesotho, Libia, Mauritius, Panamá, Tailandia, Togo y Uzbekistán, que representan el 6,2% de los Estados Partes de la Convención) promulgaron sus leyes refundidas en respuesta a una recomendación específica del Comité. Estos 12 Estados, además de los 56 Estados restantes que promulgaron leyes, se vieron influidos también por la función de seguimiento general del Comité y por otros factores y acontecimientos mundiales como la Cumbre Mundial en favor de la Infancia de 1990 y la fuerza obligatoria de la Convención como un instrumento que exige que se otorgue un efecto amplio a los derechos de la infancia.

3 En favor de la claridad, el número de Estados Partes con estatutos refundidos no incluye estas entidades políticas. Sin embargo, el texto del estudio hace amplias referencias a estos estatutos en su presentación de los mejores prácticas y otras esferas de preocupación.
Alcance general de los estatutos

Los estatutos existentes pueden clasificarse de manera general de acuerdo a las tres modalidades siguientes, sobre la base de sus objetivos generales y sus disposiciones específicas. La primera se trata de marcos generales con la intención específica o implícita de llevar a cabo nuevas reformas legislativas en el futuro. Los países de Europa del Este son los que han adoptado principalmente este tipo de marco, especialmente los de la ex Unión Soviética y algunos países de América Latina, todos los cuales suscriben la tradición del derecho civil. La segunda, compuesta de marcos basados en la protección de la infancia, ha sido adoptada por la mayoría de los Estados, pertenecientes todos ellos a un amplio abanico de tradiciones jurídicas (civil, derecho común, islámico y plural). Los elementos principales de estas leyes se relacionan con cuestiones de protección de la infancia, siendo las principales esferas de preocupación la manutención de los niños, la custodia, el acceso, la adopción, la administración de la justicia juvenil y distintas formas de malos tratos y explotación. La tercera categoría se compone de marcos que tienen en cuenta los derechos civiles y políticos además de los derechos económicos, sociales y culturales de los niños. Estos marcos suelen ser estatutos más amplios e integradores, y tienden a tomar en cuenta una parte substancial, si no total, de las disposiciones de la Convención. Es en la región de América Latina donde hay un mayor número de este tipo de estatutos, mientras que tres países de África (Gambia, Lesotho y Nigeria) –todos los cuales tienen tradiciones jurídicas plurales– se encuentran entre los primeros en la región que llevan a cabo este tipo de proceso amplio.

Puntos fuertes y débiles de las leyes existentes

Un análisis del contenido de las leyes reveló los siguientes puntos fuertes y débiles:

**Puntos fuertes**

- Es preciso considerar como un hito importante en las reformas jurídicas relacionadas con la infancia que se han llevado a cabo en los Estados una serie de ejemplos que revelan una apreciación e integración general de diversos elementos del enfoque de las reformas jurídicas basado en los derechos en favor de la infancia. Esto se ha reflejado expresamente en el reposicionamiento de los niños como sujetos de derechos, la identificación del Estado, la comunidad y los progenitores como titulares de obligaciones con respecto a los niños, y la mención específica de la Convención y otras normas de derechos humanos.

- Un aumento en la apreciación del concepto de complementariedad de los derechos de la mujer y de los niños y, por tanto, de la función interdependiente de la Convención sobre la eliminación de todas las formas de discriminación contra la mujer y la Convención sobre los Derechos del Niño a la hora de lograr efectos más amplios. Esto ha sido significativo, por ejemplo, en la esfera del derecho a la salud, ya que en algunas ocasiones los Estados han adoptado disposiciones sobre salud de las madres que establecen el amamantamiento obligatorio y la protección de las niñas embarazadas. De manera complementaria, en algunos estatutos de los países figuran disposiciones sobre la inclusión en los planes de estudio de la educación en materia de derechos humanos y género, en armonía con lo que se indica en las dos Convenciones, facilitando que los niños aprecien
sus derechos y tengan en cuenta las cuestiones de género en el marco de los sistemas oficiales de educación.

- Cada vez hay más pruebas que revelan la creación de órganos especiales decisorios para la infancia destinados a asegurar su acceso a la justicia y el respeto de sus garantías jurídicas, dada su vulnerabilidad en comparación con otros segmentos de la población. Además de esto, se han adoptado disposiciones para establecer tribunales separados relacionados con los niños y procedimientos adaptados a ellos. Muchos países ofrecen también asistencia jurídica y formas alternativas de resolución de disputas.

- En 15 estatutos aproximadamente figuran disposiciones sobre la participación de los niños en los conflictos armados. Esto muestra que un número gradual pero cada vez mayor de Estados han adoptado medidas jurídicas con respecto al Protocolo Facultativo de la Convención sobre los Derechos del Niño relativo a la participación de los niños en los conflictos armados.

- Hay disposiciones legislativas que obligan a los Estados a mantener registros de datos fiables sobre la situación de grupos específicos de niños, facilitando por tanto el seguimiento de la situación de la infancia en estos países.

- Las disposiciones que refuerzan a la familia como la primera línea de la protección, y la atención institucional como medida de último recurso, han cobrado cada vez más fuerza en un número de Estados y esto constituye un importante avance en las reformas en favor de los niños que necesitan atención y protección especiales. A esto se suma el dato de que un número amplio de Estados aplican normas más rigurosas para las adopciones entre los países.

- La revelación de que los Estados han intensificado también las medidas de protección de la infancia contra varias formas de malos tratos, abandono, explotación y violencia es también una observación notable. Muchas de estas disposiciones se adaptan al Protocolo Facultativo de la Convención sobre los Derechos del Niño relativo a la venta de niños, la prostitución infantil y la utilización de niños en la pornografía; las Convenciones de la OIT 138 y 182; y el Protocolo de Palermo sobre Trata de Seres Humanos de 2000. También es importante señalar que los Estados han establecido diferentes edades mínimas para diferentes tipos de empleo y adiestramiento sobre la base de sus circunstancias económicas y sociales particulares.

- La mayor aceptación de la importancia que tiene prestar una protección adecuada a los niños con discapacidades, concediendo una atención especial a la prevención y detección tempranas y al objetivo final de garantizar la integración del niño en la sociedad y ofrecerle la posibilidad de llevar una vida independiente, se adapta a los principios y disposiciones de la Convención.

- Unas disposiciones innovadoras son las nuevas dimensiones de los derechos económicos de los niños, que consisten en su derecho a trabajar en condiciones seguras y justas, a inscribirse en los sindicatos, a heredar, y a poseer y gestionar propiedades según su capacidad. Esto se debe examinar a la luz de la aparición de
hogares encabezados por niños debido a factores como por ejemplo la pandemia del VIH/SIDA.

- Los Estados reconocen cada vez más la importancia de establecer leyes específicas sobre los niños que necesitan atención y protección especiales. Se trata de una señal positiva que reconoce el lugar y la importancia de la protección de la infancia en el esquema general de la aplicación de la Convención.

- También se han logrado grandes avances en la esfera de las reformas jurídicas en el sector de la administración de la justicia juvenil. Disposiciones sobre el respeto de las garantías jurídicas, la remisión de penas y los sistemas cuasi judiciales de justicia son innovaciones que es preciso estudiar más y reproducir en otros ámbitos.

**Puntos débiles**

- En algunos estatutos se observan disposiciones discriminatorias en materia de género en la esfera de la responsabilidad de padres y madres. En los estatutos de algunos países se obliga a los padres que no están casados con las madres de sus hijos a obtener una orden judicial oficial como requisito previo para el ejercicio de su responsabilidad como padres sobre sus hijos. Estas disposiciones legislativas que se observan en el estudio contradicen las disposiciones de las dos Convenciones y la Declaración Universal de Derechos Humanos, todas las cuales exigen la responsabilidad conjunta de ambos progenitores y la igualdad de los derechos de hombres y mujeres para ejercer su responsabilidad como padres o madres.

- También se han encontrado discrepancias en algunas disposiciones de los Estados con respecto a la edad mínima de admisión en las fuerzas armadas y sus respectivas declaraciones realizadas en relación con el Protocolo Facultativo de la Convención sobre los Derechos del Niño relativo a la participación de los niños en los conflictos armados.

- Se considera que una esfera que es preciso analizar más detenidamente es la definición de niño que figura en los estatutos de algunos países. Esto se debe al hecho de que el artículo 1 de la Convención define al niño como todo ser humano menor de dieciocho años de edad, salvo que, en virtud de la ley que le sea aplicable, haya alcanzado antes la mayoría de edad. Esta disposición ha provocado situaciones en las que se permite a los niños casarse antes de cumplir 18 años. Sin embargo, es importante que las disposiciones de la Convención se lean y se apliquen en combinación con las disposiciones de la Convención sobre la discriminación y la Convención sobre el consentimiento para el matrimonio, la edad mínima para contraer matrimonio y el registro de los matrimonios.

- En algunos países se ha determinado que la edad mínima a efectos de responsabilidad penal es demasiado baja, lo que implica que los niños quedarían expuestos al sistema de justicia penal a una edad muy temprana y por tanto está en desacuerdo con los principios y disposiciones de la Convención, además de otras normas como las Reglas Mínimas de las Naciones Unidas para la administración de la justicia de menores (“Reglas de Beijing”).
Mientras que un número considerable de Estados han adoptado medidas para eliminar la tortura y el trato y los castigos inhumanos y degradantes, otras disposiciones han negado estas medidas al permitir el castigo corporal, lo que demuestra que los niños siguen corriendo el riesgo de sufrir malos tratos físicos tanto de jure como de facto.

Principales recomendaciones

Se han realizado las siguientes recomendaciones con miras a mejorar la situación actual de las reformas legislativas.

1. La necesidad de que el Comité verifique el alcance del Comentario General 5

Hay varios grados de “refundición” entre los Estados Partes que han iniciado el proceso de reformas con la intención de promulgar estatutos infantiles. Algunas de estas variaciones se han basado en interpretaciones diferentes del Comentario General 5 por parte del Comité. Aunque el Comité ha asumido un enfoque caso por caso de la reforma legislativa, también es esencial que clarifique sus criterios en la elaboración de observaciones y recomendaciones finales para los estatutos refundidos, a fin de garantizar un nivel mayor de uniformidad en el contenido de los estatutos y ciertamente en el proceso de reforma legislativa.

2. Los Estados Partes deben realizar un seguimiento de las recomendaciones del Comité

Los Estados que todavía no han promulgado estatutos en respuesta a una recomendación específica del Comité deben recibir apoyo técnico y financiero de UNICEF para acelerar este proceso, mientras que otros que han recibido recomendaciones específicas con respecto a las deficiencias de sus estatutos existentes deben aprovechar también la oportunidad que proporciona este estudio para iniciar los análisis apropiados.

3. Compartir las mejores prácticas entre los Estados

Se han definido los siguientes modelos para su posible reproducción:

- Enfoques interinstitucionales para la aplicación de la Convención en Letonia y Uzbekistán;
- Enfoques cuasi judiciales para la administración de la justicia juvenil en Ghana, Sierra Leona y Uganda;
- Enfoques de seguimiento del bienestar basados en la comunidad en países como Malasia;
- Elaboración de disposiciones sobre los niños en los conflictos armados en países como Gambia y Nigeria;
- La atención institucional como medida de último recurso tanto para los niños privados de un apoyo familiar alternativo como para los niños en conflicto con la ley en países como Azerbaiyán.
4. Diseño y aplicación de proyectos sobre costos a escala piloto

Sobre la base de la observación de que los estatutos refundidos ofrecen oportunidades para analizar los costos de la prestación de servicios en favor de los niños, UNICEF va a iniciare un proceso que conducirá al diseño y la aplicación de proyectos a escala piloto sobre el costo de los estatutos. Los criterios para la selección de países deberían basarse en aquellos que tienen y no tienen marcos refundidos, a fin de que sirvan de base para realizar una comparación.

5. Codificación y armonización del derecho consuetudinario en todos los países

El Comité considera la falta o la dificultad para armonizar el derecho consuetudinario con la Convención como la mayor amenaza al proceso de refundición, especialmente en los países con tradiciones jurídicas mixtas. Sin embargo, las dimensiones multiétnicas del derecho consuetudinario exigen una amplia consulta y diálogo entre las diferentes comunidades étnicas y los dirigentes. Los Estados deben comprometerse a llevar a cabo el proceso de armonización del derecho consuetudinario con la Convención, y al hacerlo deben tener en cuenta las exigencias anticipadas en materia financiera y de recursos humanos de los asociados pertinentes, como las Comisiones para la Reforma de la Ley, a fin de que sea eficaz.
Résumé Analytique

Contexte et objectifs de l’étude

La présente étude s’inspire de l’Observation générale No. 5 (2003) du Comité des droits de l’enfant (le Comité), qui traite des questions liées aux Mesures d’application générales de la Convention relative aux droits de l’enfant. Ce Commentaire décrit, notamment, la place des codes relatifs aux enfants dans le contexte des réformes législatives. L’étude a pour objectif de déterminer dans quelle mesure ces codes ont été intégrés dans les initiatives de réformes législatives des États parties à la Convention des droits de l’enfant (la Convention ou CDE).

Conclusions principales

La situation actuelle

Sur un total de 193 États parties à la CDE, selon les estimations, 69 pays, représentant 35,7 % du total, ont adopté des codes relatifs aux enfants, tandis que 31 pays supplémentaires, représentant 16 % des États parties, doivent encore adopter ces lois en vertu de la recommandation expresse du Comité. En plus des États parties déjà cités, quatre autres entités politiques situées géographiquement au sein d’autres États parties à la Convention, ont également adopté des codes en faveur des enfants. Il s’agit de Goa, qui fait partie de la Fédération indienne, de Terre Neuve et du Saskatchewan, qui font partie de la Fédération canadienne, et de Jersey une colonie de la Couronne du Royaume-Uni4. Cependant, le nombre total d’États parties qui ont adopté des codes en plus de ceux qui doivent encore le faire se monte à 100, ce qui représente 51,8 % des États parties à la CDE. Il en ressort que les dispositions en faveur des enfants s’inscrivent dans une tendance caractérisant les réformes législatives dans les États parties à la CDE.

Le rôle du Comité dans les initiatives mondiales

Les initiatives des États parties dans le secteur des codes législatifs reposent sur deux piliers. Douze (12) États (Belize, Burkina Faso, Gambie, Haïti, Kenya, Lesotho, Libye, Maurice, Ouzbékistan, Panama, Thaïlande et Togo, et représentant 6,2 % des États parties à la CDE) ont adopté des dispositions suite à une recommandation expresse du Comité. Ces 12 États, qui viennent s’ajouter aux 56 États en train d’adopter, ont été aussi influencés par le Comité, exerçant son rôle en matière de suivi général, et par d’autres facteurs et manifestations de portée mondiale, tels que le Sommet mondial pour les enfants de 1990 et la CDE, un instrument dont la force de conviction pousse les pays à respecter globalement les droits de l’enfant.

Portée générale des dispositions

Les textes actuellement en vigueur peuvent être grossièrement divisés en trois catégories en se fondant sur leurs orientations générales et dispositions spécifiques. Il s’agit des cadres généraux, prouvant l’intention expresse ou implicite d’entreprendre d’autres réformes législatives à l’avenir. Ce type de cadre a été adopté essentiellement par les pays d’Europe orientale, en particulier ceux de l’ex-Union soviétique, et par certains pays d’Amérique...
latine, des pays qui souscrivent tous à la tradition du droit civil. La deuxième catégorie, à savoir les cadres fondés sur la protection de l'enfance, a été adoptée par la majorité des États, et se réfère à tout un éventail de traditions juridiques, (droit civil, droit commun, droit islamique et multiples). Les caractéristiques principales de ces lois ont trait à la protection de l’enfance, notamment les domaines qui peuvent poser problème comme : soins aux enfants, garde, accès, adoption, mais aussi administration de la justice pour mineurs, et diverses formes de mauvais traitements et d’exploitation. La troisième catégorie se compose de cadres qui tiennent compte des droits civils et politiques en plus des droits économiques, sociaux et culturels des enfants. Ces cadres particuliers ont tendance à être plus généraux et à tenir compte de diverses dispositions, voire de toutes les dispositions de la CDE. La région de l’Amérique latine regroupe la majorité de ces dispositions législatives, tandis que trois pays africains (la Gambie, le Lesotho et le Nigéria) – possédant tous les trois des traditions législatives multiples – ont été les premiers de la région à entreprendre ce type de démarche globale.

**Points forts et points faibles des lois en vigueur**

Un examen des textes de lois a permis de mettre en lumière les points forts et les lacunes suivantes :

**Points forts**

- La preuve évidente d’une prise en compte et d’une intégration des éléments permettant d’aborder les réformes législatives en faveur des enfants dans une optique de droits doit être considérée comme une étape importante des réformes législatives relatives à l’enfance entreprises par les États. Cette prise de position s’est traduite par un repositionnement des enfants qui sont devenus des sujets de droits, par l’identification de l’État, de la communauté et des parents comme entités ayant des devoirs envers les enfants, et par la mention expresse de la CDE et des autres normes relatives aux droits de l’homme.

- Une meilleure compréhension de la complémentarité des droits des femmes et des enfants et donc de l’interdépendance des rôles de la Convention sur l’élimination de toutes les formes de discrimination à l’égard des femmes (CEDAW) et de la CDE en termes de globalité. Cet aspect est notable, par exemple, dans le domaine du droit à la santé, où certains États ont pris des dispositions en matière de santé maternelle, dans certains cas, instaurant l’allaitement maternel obligatoire et la protection des jeunes filles enceintes. Certains pays ont adopté des textes comprenant encore des dispositions relatives à l’éducation relative aux droits humains et aux questions de parité des sexes dans le programme d’enseignement scolaire, conformément à la CEDAW et à la CDE; le système d’éducation permet alors aux enfants de connaître leurs droits et le rôle des hommes et des femmes dans la société.

- De plus en plus, on entend parler de la création d’organes juridictionnels spécialement destinés aux enfants comme moyen de leur garantir l’accès à la justice et à une procédure régulière compte tenu de leur vulnérabilité par rapport aux autres segments de la population. En outre, des dispositions ont été prises en faveur de divers tribunaux traitant avec des enfants et procédures respectant les
enfants. De nombreux pays fournissent également une aide juridique et d'autres formes de règlement des différends.

- Selon les estimations, 15 textes législatifs contiennent des dispositions relatives à la participation d’enfants aux conflits armés. Il apparaît ainsi qu’un nombre toujours croissant d’États ont adopté des mesures législatives conformes au Protocole facultatif à la CDE, et concernant la participation des enfants aux conflits armés.

- Des dispositions législatives imposent déjà aux États de tenir à jour des données fiables sur la situation de groupes spécifiques d’enfants afin de faciliter le suivi de la situation des enfants dans ces pays.

- Les dispositions visant à renforcer le rôle essentiel de la famille dans la protection de l’enfant et à s’assurer que le placement dans un établissement ne constitue qu’une mesure de dernier ressort ont pris de l’ampleur dans un certain nombre d’États et représentent un progrès décisif dans les réformes en faveur des enfants qui ont besoin d’une protection et de soins particuliers. Ces mesures doivent aller de pair avec les normes plus strictes appliquées par un grand nombre d’États parties aux adoptions à l’étranger.

- La constatation selon laquelle les États ont également renforcé leurs mesures de protection des enfants contre diverses formes de mauvais traitements, de négligence, d’exploitation et de violence est également encourageante. Nombre de ces dispositions sont conformes au Protocole facultatif à la CDE, concernant la vente d'enfants, la prostitution des enfants et la pornographie mettant en scène des enfants, les Conventions 138 et 182 de l’OIT, et le Protocole de Palerme adopté en 2000 sur la traite des êtres humains. Il est également important de noter que les États ont défini des âges minimums différents pour divers types d’emplois et d’apprentissage, compte tenu de leurs conditions économiques et sociales particulières.

- On reconnaît de plus en plus aujourd’hui qu’il est important de fournir une protection appropriée aux enfants handicapés, en accordant une attention particulière à la prévention et au diagnostic précoce, l’objectif final étant de s’assurer que ces enfants soient intégrés à la société et qu’ils aient la possibilité de mener une vie indépendante, conformément aux principes et dispositions de la CDE.

- Les dispositions novatrices en termes de droits économiques des enfants englobent leur droit de travailler dans un environnement sans danger et dans des conditions équitables, d’adhérer à des syndicats, d’hériter, de posséder et gérer des biens en fonction de leurs capacités et de leurs aptitudes. Elles prennent toute leur importance dans le contexte de la situation nouvelle que constituent les ménages dirigés par des enfants en raison de facteurs tels que la pandémie du VIH/SIDA.

- Les États comprennent de mieux en mieux qu’il est important d’adopter des textes de loi portant spécifiquement sur le problème des enfants ayant besoin d’une protection et de soins particuliers, ce qui prouve bien qu’ils reconnaissent
De grands progrès ont été accomplis en matière de réformes législatives dans le domaine de l'administration de la justice pour mineurs. Les dispositions relatives aux procédures légales, à la déjudiciarisation et aux systèmes quasi-juridictionnels sont autant d’innovations qui doivent être étudiées en profondeur et reproduites.

Points faibles

- **Des dispositions discriminatoires** peuvent être observées dans le domaine de la responsabilité parentale. Dans certains pays, les pères non mariés à la mère de leurs enfants sont obligés d’obtenir une ordonnance judiciaire officielle pour pouvoir exercer leurs responsabilités parentales envers leurs enfants. Dans le cadre de l’étude, ces dispositions législatives sont jugées en contradiction avec les dispositions de la CDE, de la CEDAW et avec la Déclaration universelle des droits de l’homme, des textes qui disposent tous de la responsabilité commune des parents et de l’égalité des droits parentaux des hommes et des femmes.

- Des incohérences ont été constatées entre les dispositions de certains États concernant l’âge d’admission dans les forces armées et leurs déclarations respectives au titre du Protocole facultatif à la CDE, et concernant la participation des enfants aux conflits armés.

- **La définition du concept « enfant »** dans les textes de loi de certains pays doit encore être précisée. En effet dans l’Article premier de la CDE, l’enfant s’entend de tout être humain âgé de moins de dix-huit ans, sauf si la majorité est atteinte plus tôt en vertu de la législation qui lui est applicable. Cette disposition a entraîné des situations dans lesquelles les enfants ont le droit de se marier avant l’âge de 18 ans. Il est toutefois important de lire et d’appliquer les dispositions de la CDE parallèlement aux dispositions de la CEDAW et de la Convention sur le consentement au mariage, l'âge minimum du mariage et l'enregistrement des mariages.

- Dans certains pays, l’âge de la responsabilité pénale a été fixé trop bas; dans ce cas, des enfants risquent d’être exposés au système de justice à un trop jeune âge, ce qui est contraire aux principes de la CDE et à d’autres normes telles que l’Ensemble de règles minima des Nations Unies concernant l'administration de la justice pour mineurs (« Règles de Beijing »).

- Bien qu’un nombre non négligeable d’États aient pris des mesures pour interdire la torture ainsi que les traitements et les châtiments inhumains et dégradants, elles sont souvent invalidées par d’autres dispositions qui autorisent les châtiments corporels, indiquant que de jure et de facto, les enfants continuent à être exposés à la maltraitance physique.
Recommandations principales

Les recommandations ci-dessous ont été faites dans le but d’améliorer les réformes législatives en cours.

1. La nécessité, pour le Comité, de définir clairement l’intention de l’Observation générale No. 5

On constate divers degrés de « codification » dans les États parties qui ont entamé un processus de réformes se traduisant par l’adoption de dispositions législatives en faveur des enfants n’agissent pas toujours dans la même optique. Ces variations s’expliquent quelquefois par des interprétations différentes de l’Observation générale No. 5 par le Comité. Le Comité ayant adopté l’approche du cas par cas en matière de réforme législative, il lui faut aujourd’hui établir des critères en élaborant des observations et des recommandations finales relatives aux codes qui permettront d’uniformiser les textes et qui garantiront la sécurité juridique des processus de réforme législative.

2. Les États parties devraient suivre les recommandations du Comité

L’UNICEF devrait fournir un appui technique et financier aux États qui prévoient d’adopter des dispositions législatives suite à une recommandation expresse du Comité dans le but d’accélérer le processus, tandis que les États pour lesquels des recommandations spécifiques ont été faites pour pallier les lacunes de leurs dispositions actuelles devraient s’appuyer sur la présente étude pour apporter les révisions idoines.

3. Le partage des meilleures pratiques entre les États

Les modèles ci-dessous pourraient être utilement reproduits :

- Les méthodes de mise en œuvre de la CDE sur une base interinstitutionnelle appliquées par la Lettonie et l’Ouzbékistan;
- Les méthodes juridictionnelles d’administration de la justice pour mineurs appliquées par le Ghana, la Sierra Leone et l’Ouganda;
- Les méthodes communautaires de suivi de la protection sociale appliquées par la Malaisie;
- Les dispositions relatives aux enfants dans les conflits armés élaborées par des pays tels que la Gambie et le Nigéria;
- La prise en charge par des établissements comme mesure de dernier ressort pour les enfants pour lesquels aucune solution familiale n’est possible et pour les enfants en conflit avec la loi dans des pays tels que l’Azerbaïdjan.

4. L’élaboration et la mise en œuvre de projets pilotes d’établissement des coûts

Sur la base de l’observation selon laquelle des dispositions législatives unifiées permettent d’établir le coût des services destinés aux enfants, l’UNICEF mettra en place un mécanisme d’élaboration et de mise en œuvre de projets pilotes d’établissement des coûts des dispositions législatives. Le critère de sélection des pays devrait se fonder sur la présence ou l’absence de cadres unifiés, de façon à pouvoir établir des comparaisons.
5. Codification et harmonisation du droit coutumier dans tous les pays

Le Comité estime que les difficultés ou l’absence d’harmonisation du droit coutumier avec la CDE entrave les mécanismes d’unification, en particulier dans les pays de traditions juridiques mixtes. Cependant, en raison des dimensions pluriethniques du droit coutumier, de larges consultations et un dialogue sérieux doivent être établis avec les divers dirigeants et communautés ethniques. Les États doivent s’engager à mener à bien le processus d’harmonisation du droit coutumier avec la CDE compte tenu des coûts et des effectifs que ce processus entraînera pour les partenaires qui seront chargés de cette tâche, tels que les Commissions de réforme du droit.
## List of Acronyms

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<th>Acronym</th>
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<tr>
<td>AIDS</td>
<td>Acquired Immune Deficiency Syndrome</td>
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<td>ACRWC</td>
<td>African Charter on the Rights and Welfare of the Child</td>
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<tr>
<td>CEDAW</td>
<td>Convention on the Elimination of All forms of Discrimination against Women</td>
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<td>CO</td>
<td>Concluding Observations</td>
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<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<td>GA</td>
<td>General Assembly</td>
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<td>HIV</td>
<td>Human Immunodeficiency Virus</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ICESCR</td>
<td>International Covenant on Economic, Social and Cultural Rights</td>
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<td>ILO</td>
<td>International Labour Organization</td>
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<td>IPEC</td>
<td>International Programme for the Elimination of Child Labour</td>
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<td>IR</td>
<td>Initial Report</td>
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<td>PRSP</td>
<td>Poverty Reduction Strategy Programme</td>
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<td>UDHR</td>
<td>Universal Declaration of Human Rights</td>
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<td>United Nations High Commission for Human Rights</td>
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Introduction

Consolidated children’s rights statutes as part of a broad legislative mandate

The period following the entry into force of the Convention on the Rights of the Child (the Convention or CRC) has witnessed the enactment of consolidated children’s rights statutes (statutes) by a considerable number of States Parties. This has taken place within the general framework of article 4 of the CRC, requiring of States to initiate among other interrelated actions, appropriate legislative measures necessary to enforce the rights of the child. The enactment of statutes as a measure to implement the CRC may be regarded as an example of such a measure. Law reforms leading to the passage of consolidated laws in favour of children are therefore integral to the overall efforts by State Parties to ensure harmonisation between their respective laws and the CRC and therefore are not to be considered or perceived as separate or isolated processes.

Legislative reforms have been cited as important ingredients for the enforcement and fulfilment of human rights. Hence in addition to the CRC, other international frameworks such as the International Bill of Rights (constituted by the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)) in addition to the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) maintain the need for law reform for the enforcement of rights. Article 2 of CEDAW for example contains a comprehensive outlay of provisions which relate to initiatives expected in the area of legal reform by State Parties, with a view to eliminating discrimination against women. These measures include constitutional reviews, the enactment of new laws and the review of existing ones (including customary laws).5

The importance of legislative reforms as one aspect of measures to secure implementation of the rights of the child has been given further expression in separate General Comments by the Committee on Economic, Social and Cultural Rights and the Human Rights Committee.6 In each of these, legislative reforms are considered fundamental prerequisites to the fulfilment of the rights of the child. As an example, General Comment 3 of the Committee on Economic, Social and Cultural Rights, states that:

“The means which should be used in order to satisfy the obligation to take steps are stated in article 2(1) to be “all appropriate means, including particularly the adoption of legislative measures.” The Committee recognizes that in many instances legislation is highly desirable and in some cases may even be indispensable. For example, it may be difficult to combat discrimination effectively in the absence of a sound legislative foundation for the necessary measures. In fields such as health, the protection of children and mothers, and education, as well as in respect of the matters dealt with in articles 6 to 9, legislation may also be an indispensable element for many purposes.”

5 See Article 2 (b) (f) and (g) of CEDAW.
6 These General Comments are each headed “General Comment 3.”
Provisions of international law and General Comments provided by relevant treaty monitoring bodies broadly highlight the role of legislation as indispensable frameworks for the implementation of human rights in general and the CRC in particular.\(^7\)

Regional human rights instruments also contain similar provisions, mandating States to take active measures in the field of law reform. For instance, *The African Charter on the Rights and Welfare of the Child (ACRWC)* is explicit about the importance of *inter alia*, legislative reforms in giving effect to its provisions (article 1(1)). A presumption of a working system of law is also expressed in article 26 of *The European Convention on Human Rights* under which the European Commission is mandated to receive complaints from aggrieved individuals, persons or groups upon the exhaustion of *domestic remedies*. In a similar vein, the *European Convention on the Exercise of the Children’s Rights* is predicated upon a comprehensive system of procedural laws that should result in the realisation of the rights of the child. This is affirmed from both the provisions of the European Convention itself and the policy drive that lay behind it. The *Council of Europe* has made the following observations with respect to the importance of article 4 of the CRC:

“After noting that Article 4 of the United Nations Convention requires Parties to undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the convention, the Council of Europe decided that these measures were of fundamental importance for the exercise of children’s rights. Without such measures children would not be able to exercise many of these rights.”\(^8\)

Other global initiatives also underscore the necessity of legislative reforms. The *Inter-Parliamentary Union-UNICEF* forum of 2002 (attended by 250 Parliamentarians from 75 countries) and which emphasised the importance of legislative reforms in the advancement of the rights of the child as set out under international law may be cited as one such example.\(^9\)

This study examines legislative reforms undertaken by State parties to the CRC within the specific legislative context of consolidated children’s statutes. It is divided into four Parts. **Part I** deals with the overall context, methodology and impact of legal traditions; **Part II** reviews the present status of global reforms; **Part III** examines the general thrust of existing statutes and **Part IV** draws out important lessons and recommendations for the Committee, State parties, UNICEF and other partners for future improvements in the ongoing global effort.

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\(^7\) For reasons already outlined, reference in this study to the implementation of the CRC shall be read to include other relevant international and regional treaties.


Part I: Putting Consolidated Children’s Codes into Perspective

1.1 Context

General Comment 5 of the Committee on the Rights of the Child (2003)

The independent monitoring role of the Committee on the Rights of the Child has had a catalytic effect on legislative reforms among States which have ratified the CRC, and in the process has contributed immensely to the development of a corpus of international jurisprudence in relation to the rights of the child. The examination by the Committee of progress reports of States Parties on measures they have taken to implement the CRC, and observations and recommendations made by it consequent to them10 have served as valuable opportunities for appreciating common and specific issues surrounding legislative reforms from a global perspective.

After a decade of analysis of State party reports on measures taken under article 4, the Committee developed General Comment No. 5 of 2003 (the Comment) which deals with General Measures of Implementation of the Convention on the Rights of the Child. This study is specifically informed by this Comment to the extent that it highlights the views of the Committee on the importance of consolidated children’s statutes within the broad context of legislative reforms. The relevant parts on which the study is based are reproduced in box 1.1 below:

Box 1.1: Relevant Parts of General Comment 5 on the specific importance of consolidated children’s rights statutes

The Committee believes a comprehensive review of all domestic legislation and related administrative guidance to ensure full compliance with the Convention is an obligation. Its experience in examining not only initial but now second and third periodic reports under the Convention suggests that the review process at the national level has, in most cases, been started, but needs to be more rigorous. The review needs to consider the Convention not only article by article, but also holistically, recognizing the interdependence and indivisibility of human rights. The review needs to be continuous rather than one-off, reviewing proposed as well as existing legislation...States parties need to ensure, by all appropriate means, that the provisions of the Convention are given legal effect within their domestic legal systems...The Committee emphasizes, in particular, the importance of ensuring that domestic law reflects the identified general principles in the Convention (arts. 2, 3, 6 and 12 (see paragraph 12 above)). The Committee welcomes the development of consolidated children’s rights statutes11, which can highlight and emphasize the Convention’s principles. But the Committee emphasizes that it is crucial in addition that all relevant “sectoral” laws (on education, health, justice and so on) reflect consistently the principles and standards of the Convention. The Committee encourages all States parties to enact and implement within their jurisdiction legal provisions that are more conducive to the realization of the rights of the child than those contained in the Convention, in the light of article 41.

10 See articles 43(1) and 45(d) of the CRC.
11 The title of this study has been informed by express description of these laws as consolidated children’s rights statutes by the Committee. It must however be noted that in its Concluding Observations and Recommendations to States parties, the Committee has applied the terms “consolidated children’s codes” or “children’s codes”, interchangeably in reference to the same legislative process. The study reproduces these terms where particular text is being reproduced, but however maintains the term “consolidated children’s statutes” or “children’s statutes” within the main text.
The Comment appreciates the degree to which legislative reforms are expected to be conducted in the light of the principles and provisions of the CRC in addition to the place and importance of children’s statutes in this process. It educes the following important observations:

- Review of all domestic legislation and consequential administrative guidelines in the light of the CRC is not only expedient but also obligatory.
- Reform efforts are to take account of the principles of interdependency and indivisibility of human rights in order to reflect the holistic approach of the CRC. Legislative reform should be continuous as opposed to a one-off exercise.
- Based upon a thorough analysis of State reports (initial, second and third) as mandated under the CRC there is now a body of knowledge which is pointing to the fact that many countries have initiated action in the area of legislative reform but not necessarily accompanied by the precision required to reflect the principles and provisions of the CRC.
- The design of consolidated children’s statutes serves as a useful strategy for integrating and incorporating the principles and contents of the CRC to a large extent.
- The development of children’s statutes should however not be a bar to the review of sectoral laws where they exist or the design of such laws in response to emerging global, regional and national concerns.

General Comment 5 therefore creates a fluid and responsive basis for legislative reforms based on the principle that all treaty obligations are interrelated and interdependent. The degree of flexibility and at the same time comprehensiveness afforded by the Comment may also be appreciated by the fact that the Committee has also welcomed the adoption of other legislative frameworks, such as family codes, provided that they conform to the principles and provisions of the CRC.¹²

The Comment serves as the broad contextual framework for this study. Since its introduction in 2003, there has been no attempt to review its impact on the law reform efforts of States Parties and it is against this background that UNICEF has found it necessary to conduct a study which examines how it has been applied and interpreted by the Committee and States Parties to the CRC.

1.2 Objectives and methodology of study

The objective of this study is to examine the extent to which consolidated statutes have been featured in the law reform efforts of States Parties. The study specifically investigates the following:

1. An estimation¹³ of the number of States which have embarked upon consolidated processes leading to the enactment of such statutes;
2. The impact of legal traditions on State enactment of consolidated children’s statutes;


¹³ The possibility that some States have not been captured is acknowledged as a potential short fall of the study.
3. *Processes* leading to the enactment of these statutes, including the involvement and participation of stakeholders;

4. The extent of “comprehensiveness” of these statutes and how they reflect the principles and provisions of the CRC in the light of General Comment 5. This entails a comparative overview of the contents and structure of existing and proposed statutes in the light of General Guidelines submitted by the Committee on “the form and content of initial reports to be submitted by State parties” under article 44, paragraph 1(a) of the Convention.

5. *Challenges, lessons learned* and the identification of best practices on the basis of State party experiences, especially in relation to the content of existing consolidated statutes.

6. Suggestions on the way forward, first in reference to proposed measures that can be taken by the Committee to enhance its catalytic role in State party legislative reform processes and secondly in relation to how States can fast track their legislative agenda in favour of children.

**Methodology and criteria for identification of statutes**

The study was undertaken through a desk review of initial and periodic reports\(^{14}\) submitted by all States Parties (*States Party reports*) to the Committee in accordance with article 44 of the CRC. Existing reports were studied in tandem with corresponding concluding observations and recommendations made by the Committee in relation to measures initiated in the sphere of legislative reform in general and with respect to the enactment of consolidated children’s statutes in particular. This process was complemented by the dissemination of a questionnaire\(^ {15}\) to UNICEF country offices, specifically requesting information on the existence of children’s statutes in their respective areas of operation. Responses to these questionnaires helped augment and clarify information obtained from States Party reports on the existence of such statutes.

It was conducted within the context of major legal traditions of States Parties, namely Islamic law, civil law, common law and plural legal systems. This was based on an appreciation that legal systems potentially influence the mode, pace and content of legislative reforms in favour of children. Constitutional developments within States Parties also formed an important pillar of the analytical process in view of the fact that they tend to provide deeper insights into some of the legal and policy considerations informing States Party implementation of article 4 of the CRC.

As already indicated, the Committee on its part has generally described the implementation of children’s statutes as a strategy leading towards comprehensive reforms and therefore did not arrive at a definition of what should constitute such a statute.\(^ {16}\) In keeping with the thinking of Committee, the study falls short of proposing any such definition but instead applies the following identifying indicators as a means of ascertaining whether or not a country has undertaken reforms leading to the enactment of consolidated law or bill:

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\(^{14}\) This was to the extent of their availability.

\(^{15}\) The questionnaire was distributed under the auspices of the Gender, Rights and Civic Engagement Section UNICEF Division of Policy and Practice of UNICEF New York.

\(^{16}\) This point is being made by reference to all the Concluding Observations and Recommendations made to all the State parties to the CRC. At best, the Committee has described such a legal framework as a document which reflects the principles and provisions of the CRC. See sub part for more details.
- Where the UNICEF country office in question responded in the affirmative to the question whether or not a consolidated children’s statute was in place.
- Where words or phrases have been used in the memorandum, title, or content of the law to suggest a clear intention on the part of the legislature of a particular country to enact a consolidated law. These are clear cut in some country legislations such as in Ghana and Jersey. The title to the law of Ghana states that it is an Act to reform and consolidate the law relating to children, to provide for the rights of the child, maintenance and adoption, regulate child labour and apprenticeship, for ancillary matters concerning children generally and to provide for related matters. In similar terms, the Jersey law indicates that it is a law to reform and consolidate the law relating to children and for connected purposes.
- Where there are indications from the State Reports or Committee observations and recommendations that the law in question was designed in response to General Comment 5, with respect to consolidated laws.
- Where none of the above exists but the general content of the child-related law of a particular country is of comparable nature with others which have met the above criteria. This criterion for instance, was used in selecting the statutes of the Ireland, New Zealand, New Foundland, Saskatchewan and the United Kingdom.

The study uses a comparative approach to determine similarities and differences if any between country experiences.

1.3 The impact of legal traditions on the enactment of consolidated children’s statutes

Legal traditions serve as important frameworks for appreciating the mode and content of legislative reforms among countries and therefore provide important comparative lens with which to discuss State responses to the enactment of consolidated statutes. The systems considered in this context are those which substantially reflect the legal systems of States Parties to the CRC. They are (1) the Islamic law tradition (or Shari’a), (2) the civil law tradition, (3) the common law tradition and (4) the plural or mixed legal tradition.

Islamic law tradition (Shari’a)

For purposes of this study States Parties of the Islamic legal tradition may be described as those whose civil and penal laws are predominantly based on Shari’a. According to a UNICEF study conducted in 2004, 18 22 States Parties19 have legal systems that fit into this category. A review of constitutional provisions of other States however underscore the role of Islam as a primary determinant of State policy and on this basis a total of 28 countries may

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19 Id. Fn. 6 at page 3. It lists the countries as Afghanistan, Bahrain, Bangladesh, Brunei, Jordan, Libya, Maldives, Mauritania, Pakistan, Qatar, Saudi Arabia, Sudan, UAE, Kuwait, Syria, Morocco, Yemen, Iran, Iraq, Tunisia, Oman and Djibouti.
be identified.\textsuperscript{20} The UNICEF study also significantly pointed to the paucity of consolidated children’s statutes among these countries, citing Tunis and Libya as being the only known examples.\textsuperscript{21}

Constitutional provisions also serve as important channels for appreciating the interface between Shari’a and general treaty obligations. The provisions of the Oman constitution for example, states that \textit{the religion of the State is Islam and the Islamic Shari’\textasciiacute;a is the basis of legislation.}\textsuperscript{22} Constitutions have equally determined the status of international law in relationship to domestic law, although noticeable variations exist across States. In this respect the aforementioned UNICEF study provides insight into the fact that 36\% of Islamic States have declared that Islamic law shall prevail in the event of any conflict with the CRC.\textsuperscript{23} While this is the basic constitutional philosophy among a good number of States, there are nuances that lean either towards a monist or dualist tradition. Oman and Algeria tend to point towards the former. Under its articles 72 and 76, the 1996 constitution of Oman states as follows:

72: The application of this Basic Law shall not infringe the treaties and agreements concluded between the Sultan of Oman and other States and international bodies and organizations.
76: Treaties and agreements shall not have the force of law until they have been ratified\textsuperscript{24}.

While in its second periodic report to the Committee, Algeria made the following observations:\textsuperscript{25}

“Algeria’s international commitments prevail over domestic law. In a decision dated 20 August 1989, the Constitutional Council reaffirmed the constitutional principle according to which duly ratified international treaties prevail over domestic law: “[...] after ratification and upon publication, any convention is incorporated into domestic law and, pursuant to article 132 of the Constitution, acquires a higher status than the law, thereby permitting any Algerian citizen to invoke it in the courts”. Consequently, private citizens may avail themselves of the protective mechanisms established by the Human Rights Committee and the Committee against Torture once domestic remedies have been exhausted. The Algerian authorities, the National Advisory Commission for the Promotion and Protection of Human Rights, associations and the media make much of the possibility of seeking remedies under international mechanisms. In practice, Algerian citizens and their lawyers seem satisfied with the many domestic remedies available (Courts, National Advisory Commission).”\textsuperscript{26}

\textsuperscript{20} Algeria, Comoros, Egypt, Lebanon, Mauritania and Palestine may also be classified as Shari’a systems based on the declared status of Islam in their respective Constitutions.
\textsuperscript{21} This study includes Egypt and Maldives by virtue of their classification as Shari’a States in their respective Constitutions.
\textsuperscript{22} Article 2 of the 1996 Constitution of Oman.
\textsuperscript{23} See page 3. However the study does not indicate which States.
\textsuperscript{24} A similar provision is made in article 32 of the 1959 Constitution of Tunis (as amended in 1998). It provides that “treaties do not have the force of law until after ratification. Treaties duly ratified have an authority superior to laws.”
\textsuperscript{25} This could also be largely influenced by a history of French colonisation.
\textsuperscript{26} SPR: Algeria: 03/03/2005.CRC/C/93/Add.7. Paras. 35-36.
A dualist variation is evident among those which have declared that specific legislation would be required following ratification in the event that the treaty in question obligates the State to enact domestic legislation. Constitutions of Bahrain (2002), Kuwait (1962) and Mauritania (1991) provide cases in point. An illustration of this is expressed in the following article 37 of the Constitution of Bahrain:

1. The King shall conclude treaties by Decree, and shall communicate them to the Consultative Council and the Chamber of Deputies forthwith accompanied by the appropriate statement. A treaty shall have the force of law once it has been concluded and ratified and published in the Official Gazette.
2. However, peace treaties and treaties of alliance, treaties relating to State territory, natural resources, rights of sovereignty, the public and private rights of citizens, treaties pertaining to commerce, shipping and residence, and treaties which involve the State Exchequer in non-budget expenditure or which entail amendment of the laws of Bahrain, must be promulgated by law to be valid.27

State party reservations also serve as indicators for appreciating the extent to which consolidated laws are limited in Islamic States. The declaration of Islam in some States as the standard against which laws will be enacted and enforced, has been the context within which such reservations have been entered.28 In limited cases, such as Oman and Bahrain, constitutional provisions are made to enable a States Party to ratify a treaty with caution. In article 37 (3) of the Constitution of Bahrain for instance, it is stipulated that under no circumstances may a treaty include secret clauses which conflict with those openly declared.

Yet in its consideration of States Party reservations, the Committee has on all occasions used the opportunity to encourage States to consider a withdrawal in some cases, while in others; it has been categorical in describing them as “unnecessary.” It is also note worthy that the Committee is equally encouraging of States to move towards a more liberal approach in the interpretation of Islam, while the CEDAW Committee has specifically recommended to Morocco to continue using ijtihad, or the evolving interpretation of Islamic religious texts to change attitudes.29

This three-pronged perspective of the Committee was reflected in its 2001 Concluding Observations to Egypt,30 spelt out in box 1.3.

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<tr>
<th>Box 1.3.1: The response of the Committee to reservations declared by Egypt</th>
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<tr>
<td>6. Noting the universal values of equality and tolerance inherent in Islam, the Committee observes that narrow interpretations of Islamic texts by authorities, particularly in areas relating to family law, are impeding the enjoyment of some human rights protected under the Convention.</td>
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<tr>
<td>9. The Committee observes that the State party's reservation to articles 20 and 21 of the Convention is unnecessary. It points out that article 20 (3) of the Convention expressly recognizes kafalah of Islamic law as a form of alternative care. Article 21 expressly refers to those States that &quot;recognize and/or permit&quot; the system of adoption, which does not apply to the State party because it does not recognize the system of adoption.</td>
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27 Also see articles 70 and 78 of the Constitutions of Kuwait and Mauritania respectively.
28 This point is authenticated in State Party reports.
29 A/52/38/Rev.1, paras 45-80.
30 CO:Egypt.21/02/2001.CRC/C/15/Add.145.
10. The Committee recommends that the State party continue its efforts to consider withdrawal of its reservation to articles 20 and 21 of the Convention, in accordance with the Vienna Declaration and Plan of Action of the World Conference on Human Rights (1993). Emphasis provided.

Despite some of the challenges posed by constitutional provisions and narrow interpretations of Islam, the Charter of the Rights of the Arab Child\(^{31}\) could serve as an additional tool for advocating for both comprehensive reforms and consolidated laws in favour of children. Article 24 of the Constitution of the State of Palestine in particular, refers to the Charter as its framework for enforcing the rights of the child.

It is significant that one key objective of the Charter is to encourage Arab States to move towards the enactment of special laws for children based on the Comprehensive Standard Legislative Manual on the Rights of the Arab Child published by the League of Arab States and adopted by the Council of Arab Ministers of Justice. According to a letter submitted from the Permanent Representative of Jordan to the United Nations addressed to Secretary General, the objective of the Charter is based on both the CRC and 1990 World Summit Declaration on the Survival, Protection and Development of Children.\(^{32}\) A close analysis of the principles and provisions of the Charter indicate its potential as a framework for encouraging States to consider comprehensive reforms in favour of children in general and the enactment of children’s statutes in particular. These key aspects of the Charter are highlighted in box 1.3.1 below.

The Charter further establishes an Arab Child Welfare Organisation as having responsibility for co-ordinating Arab efforts in the field of child care and development and making recommendations for policies, programmes and projects. This system is also expected to be a centre of excellence for providing technical and material support as well as dissemination of best practices. The comprehensive and integrated nature of the Charter serves as an avenue for bridging gaps in legal reforms across Islamic States.

**Box 1.3.2: Elements of the Charter of the Rights of the Arab Child as tools for legislative reform**

<table>
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<th>Recognition of International law:</th>
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<tr>
<td>The Charter takes account of the U.N. Charter, the Universal Declaration of Human Rights, and the Declaration on the Rights of the Child and other international instruments(^{33}).</td>
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<th>Acceptance of the principles and provisions of the CRC:</th>
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<tr>
<td>Rights guaranteed are based on the principles of non-discrimination, best interests, survival, development protection and participation. These are reflected in express references to the right to health, education(^{34}), freedom of expression, social security, leisure, protection from abuse, neglect and exploitation,</td>
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\(^{33}\) See preamble.

\(^{34}\) The Charter guarantees the right to education from the point of kindergarten to the highest level. This is more comprehensive compared to the CRC, given that the latter does not expressly provide for education at the level of early childhood.
Adherence to comprehensive and integrated approaches to implementation:

It affirms the right of the child to comprehensive and integrative social services in all stages of childhood.

Commitment to resources:

The application of the Principles of the Charter is based on mobilization of all national resources and the application of tested methods. There is an express commitment to make available the necessary financial and man-power resources for the implementation of child care programmes which would lead to its efficiency and continuity. In addition will be developed the administrative and organizational frameworks for implementation. Application of the principles of the Charter, the realisation of the objectives and adoption of the methods stated, all of these require the mobilisation of all the national resources and application of the tested methods which have proved their efficiency particularly in the Arab world.

Recognition of the importance of general, holistic and specific legislation:

Recognition is given to the sound laws and legislation as the gateway to guaranteeing the rights of the child. The Charter regards these as the means of confirming adherence and the realisation of its objectives. Legislative frameworks should take account of a. constitutional protection for safeguarding the rights of the child, b. enactment of special legislation relating to child-care and protection and in which the legal status of the child must be established. Other laws can be passed to give effect to the Charter, these include, family laws based on the principle of the best interests of the child and the family, definition of minimum age of marriage, regulation of polygamy in line with the provisions of Islam, child protection laws for the protection of children in institutionalised and juvenile care and laws to protect illegitimate children, to ensure their rights, guardianship, financial and psychological care (emphasis provided).

Civil law tradition

The civil law tradition serves as the basis of law in the majority of countries of the world, especially in continental Europe, but also in Quebec (Canada), Louisiana (USA), Japan, Latin America, and most former colonies of continental European countries. Significantly, the constitutional provisions of most civil law countries legally entitle them to automatically integrate international treaties into domestic law upon ratification – enabling lawyers and judges to invoke them directly in cases brought before the courts. This may be regarded as a positive development in relation to the incorporation of the CRC, since 75 States Parties are governed by civil law and in another 26 civil law are of the mixed civil law and customary law category.

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35 This is comparable to the provisions of article 4 of the CRC.
37 UNICEF study, supra, p.8.
38 Ibid. The study mentions Azores, Albania, Angola, Argentina, Armenia, Austria, Azerbaijan, Belarus, Belgium Benin, Bosnia and Herzegovina, Brazil, Bulgaria, Cambodia, Cape Verde, Central African Republic, Chile, Colombia, Costa Rica, Croatia, Cuba, Czech Republic, Denmark, Dominican Republic, El Salvador, Ecuador, Estonia, Finland, France, Georgia Germany, Greece, Guatemala, Haiti, Honduras, Holy See, Hungary, Iceland, Italy, Kazakhstan, Kyrgyzstan, Laos, Latvia, Liechtenstein, Lithuania, Luxembourg, The Former Yugoslav republic of Macedonia, Mexico, Moldova, Monaco, Nicaragua, Netherlands, Norway, Panama, Paraguay, Peru, Poland, Portugal, Romania, Russia, Slovakia, Slovenia, Spain, San Marino, Serbia and
As in the case of Shari’ a, country provisions on the integration of international conventions into domestic law are, however, variously defined. The Constitution of Belarus recognizes the supremacy of the universally acknowledged principles of international law and ensures that its laws comply with such principles; the conclusion of international agreements that are contrary to the Constitution shall not be permitted. This is to be contrasted with the constitutional provisions of the Czech Republic, for example, which sets out that promulgated international agreements, the ratification of which has been approved by the Parliament and which are binding on the Czech Republic, shall constitute a part of the legal order; should an international agreement make provision contrary to a law, the international agreement shall be applied.

Venezuela’s Constitution, however, has one of the most progressive provisions, in view of the following express commitment it gives to the CRC: The Convention on the Rights of the Child is thus incorporated into the national law at the highest level, as part of the Constitution (article 78). But it must also be stated in addition, that despite its relatively conservative provisions, in 1998 constitutional court of Belarus struck down article 116 of the Marriage and Family Code which allowed adoption of children by an extrajudicial procedure without the parents’ or guardians’ consent on the grounds that it was inconsistent with the Convention and the domestic constitution.

There are indications that the majority of civil law States undertook minor or extensive constitutional reforms after ratification of the CRC and some, upon the recommendation of the Committee. The impact of such constitutional reforms on constitutional provisions in one breadth and on the enactment of consolidated statutes in the other, has however, not seen uniformity across States. In this respect the experiences of Brazil and Bulgaria may be presented for comparative purposes.

In its initial report to the Committee in 1995, Bulgaria indicated that in practice a significant part of the requirements placed by the Convention were contained in the Bulgarian Constitution and legislation at the time of the Convention’s entry into force for Bulgaria. It ratified the CRC on 11 April 1991 (without any reservations) and it entered into force in the country on 3 July 1991. The Constitution was adopted on 12 July 1991, nine days following this process. This means in effect that the country used the opportunity of the ratification and adoption process of the CRC to reflect children’s rights in its Constitution. However, Bulgaria’s constitutional provisions on children are relatively minimal and point to Montenegro, Sweden, Switzerland, Tajikistan, Turkey, Turkmenistan, Ukraine, Uruguay, Uzbekistan, Venezuela, Viet Nam.

39 Burundi, Burkina Faso, Chad, China, Democratic Republic of the Congo, Congo, Côte d’Ivoire, Equatorial Guinea, Ethiopia, Gabon, Guinea, Guinea Bissau, Japan, North Korea, South Korea, Mali, Madagascar, Mongolia, Mozambique, Niger, Rwanda, Sao-Tome and Principe, Senegal, Swaziland, Taiwan, Togo.
40 See Article 8 of the 1994 Constitution of Belarus.
41 Article 10 of the 1992 Constitution of the Czech Republic.
42 This is contained under its special provisions on children.
43 UNICEF study, supra, p. 9.
46 Ibid. Para. 1.
a welfare approach,\(^{47}\) indicating that the country may not have taken full advantage of the provisions of the CRC to influence its constitutional reform process. This stands in contrast to Brazil, which, although promulgating its Constitution prior to the coming into force of the CRC,\(^ {48}\) crafted more comprehensive provisions, underpinning the status of children as subjects of rights. The provisions as presented in box 1.3.2 below provide useful lessons by way of constitutional reforms in favour of children.

The constitutional experience of Brazil in relation to children’s rights establishes the potential linkages between constitutional reforms and consolidated children’s codes within a civil law context. In its initial report to the Committee, Brazil noted the following inseparable link between its Constitution and its Statute of the Child and Adolescent:

> “From the human rights standpoint, the 1988 Constitution and the Statute of the Child and Adolescent expressed a comprehensive view of the human rights of children and adolescents, including the indivisibility of these rights, their reciprocal implementation and the equal importance of all the rights, whether civil, political, social, economic or cultural.”

**Box 1.3.3: Showing differences in child related provisions in the constitutions of Bulgaria and Brazil**

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<tr>
<th>Bulgaria</th>
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<tr>
<td><strong>General Provision on Survival, Development and Protection</strong></td>
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<td>It is the duty of the family, of society, and of the State to ensure children and adolescents, with absolute priority, the right to life, health, food, education, leisure, professional training, culture, dignity, respect, freedom, and family and community life, in addition to safe guarding them against all forms of negligence, discrimination, exploitation, violence, cruelty, and oppression.</td>
<td><strong>Specific Provisions on Survival and Development:</strong> (1) The State shall provide full health assistance programmes for children and adolescents, allowing the participation of non-governmental entities and complying with the following precepts: a. allocation of a percentage of public funds to mother and child assistance; b. creation of preventive and specialised care programmes for the physically, seniorialy, or mentally handicapped, as well as programmes for the social integration of the</td>
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\(^{47}\) A welfare approach may be described as that which reinforces the traditional position of children as objects of charity as opposed to subjects of rights as espoused by the rights based approach. This latter approach underscores the roles of duty bearers (example, parents and the State), while reinforcing the need to allow rights holders (example children) to enforce their rights by legal means and where necessary through their lawful representatives.

\(^{48}\) It however used the Declaration on the Rights of the Child of 1959 as well as on-going debates on the substantive CRC as a guide.
handicapped adolescent by means of training for a profession and communal life, and provision of access to public facilities and services by eliminating prejudices and architectonic obstacles. (2) The law shall provide standards for the construction of public sites and buildings and the manufacturing of public transportation vehicles so as to ensure appropriate access to the handicapped. Article 229. [Duty of Parents]. It is the duty of parents to assist, raise and educate their minor children, and it is the duty of children to help and assist their parents in old age, need or sickness.

**Specific Provisions on Protection:** (3) The right to special protection shall encompass the following aspects: a. minimum age of fourteen years to be admitted to work, with due regard for the provisions of Article 7 XXXIII; b. guarantee of social security and labour rights; c. guarantee of access to school for the adolescent worker; d. guarantee of full and formal knowledge of the determination of an offence, equal rights in procedural relationships and technical defence by a qualified professional, according to the provisions of the specific protection legislation; e. compliance with the principles of brevity, exceptionality and respect for the specific condition of developing individuals when applying any measure that restrains freedom; d. government encouragement, through legal assistance, tax incentives and subsidies, according to law, or the protection of orphaned or abandoned children or adolescents through guardianship; e. preventive and specialised treatment programmes for children and adolescents addicted to narcotics and related drugs. (4) The law shall severely punish abuse, violence, and sexual exploitation of children and adolescents. (5) Adoption shall be assisted by the Government, according to the law, which shall determine the cases and conditions for adoption by foreigners. (6) Children born inside or outside wedlock or adopted shall have the same rights and qualification and any discriminatory designation regarding their parents shall be forbidden. (7) In attending to the rights of children and adolescents, the provisions of Article 204 shall be taken into consideration.

**Common law tradition**

While common law countries may be noted for carrying out extensive constitutional and legislative reforms in favour of children, they do represent the minority in terms of those which have enacted consolidated laws. A few reasons may be advanced for this state of affairs.

Firstly, countries of the common law tradition apply the dualist system with respect to treaty obligations. This means that treaty obligations do not acquire domestic status upon ratification unless formal legislative action has been taken. But as with the Islamic and civil law traditions, various approaches are also discernible among common law countries. In the case of Australia, for instance, the general approach taken in relation to human rights treaties and others, is to ensure that domestic legislation, policies and practice comply with the treaty prior to ratification. Upon ratification of the CRC therefore, the policy is to undertake implementation by enacting it as domestic law. Canada has a similar policy, by which treaties do not automatically become part of the domestic law, although. Canadian courts frequently refer to them in interpreting and applying domestic law. In its initial report to the Committee, the United Kingdom (U.K.) indicated that through its enactment of the Children’s Act of 1989, it was already in compliance with the CRC by the time of its

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49 This point also takes into account the fact that common law countries have a narrower geographical presence compared to civil law countries.

50 IR: Australia. 01/02/96.CRC/C/8/Add.31. Para. 6
ratification in 1990. It was clear, however, that the U.K. was reinforcing the importance of having domestic legislation in place in order to legitimise the application of the CRC.

Constitutions of common law countries generally make minimal reference to children. The strongest reference to the rights of the child may be found in the Constitution of Ireland, which contains general provisions on the right to life of the unborn (article 40 (3) (3)), protection of the family (article 41), the rights of every child to education and informal instruction from parents (article 42) and the protection of orphans (article 45(4)).

Another important feature of the common law system in relation to law-making is that it is traditionally based on *judicial precedent* as opposed to codification of law, the main feature of the civil law system. There is, however, emerging evidence to suggest the adoption of some civil law features into the common law system and vice-versa. Whereas in civil law countries one finds a growing importance of judicial review in the law-making process, in common law countries, there also appears to be an adaptation towards statute law and codes.

Some common law jurisdictions are also noted for enacting distinct *human rights statutes* as is the case in Australia, Canada and the UK. Australia has integrated the 1959 UN Declaration on the Rights of the Child into the Schedule to the Human Rights Commission Act 1981. Furthermore, in 1986 this acknowledgment was re-affirmed by the inclusion of the Declaration as a Schedule to the legislation which replaced the 1981 Act, the Human Rights and Equal Opportunity Commission Act of 1986.

The Committee has considered the enactment of national human rights frameworks as part of a State party’s implementation of Article 4 of the CRC. However, there are indications that human rights statutes may not be able to replace the potential comprehensiveness that can be afforded by a single statute on children. This is discernible from the following observation made by the Committee in relation to the UK Human Rights Act of 1998:

“While noting the entry into force of the Human Rights Act 1998, which incorporates the rights enshrined in the European Convention on Human Rights into domestic law, the Committee is concerned that the provisions and principles of the Convention on the Rights of the Child- which are much broader than those contained in the European Convention- have not yet been incorporated into domestic law, nor is there any formal process to ensure that new legislation fully complies with the Convention…The Committee encourages the State party to incorporate into domestic law the rights, principles and provisions of the Convention in order to ensure that all legislation complies with the Convention and that the provisions and principles of the Convention are widely applied in legal and administrative proceedings” (emphasis provided).

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52 This includes the unwritten constitution of the United Kingdom.
53 IR: Australia, 01/02/96.CRC/C/8/Add.31.
Plural legal systems

Political and historical linkages between a number of countries in Asia, Africa and parts of Oceania\(^{55}\) and those of the purely civil law and common law traditions (particularly France, Britain, Belgium and Portugal), occasioned the emergence of mixed legal traditions. Mention should also be made of the Anglo-Dutch system of law, which affected countries of the Southern parts of Africa. The pre-existence of customary law or Shari’a (or both) in colonised States and the subsequent positioning of civil, common law or Anglo-Dutch systems, made this possible and has been maintained even after the political independence of these States.

However, this historical process has had a profound effect on the legislative agenda of affected State parties.\(^{56}\) Colonization generally resulted in the introduction of new laws, principally founded on the ideals of the colonizing State. For instance, in Ghana, Section 14 of the Gold Coast Supreme Court Ordinance of 1876 formally established a link between the jurisprudence of Britain and that of the then Gold Coast. It provides that *the common law, the doctrines of equity and the statutes of general application which were in force in England at the date when the colony obtained a local legislature, that is to say on the 24th day of July 1874, shall be in force within the jurisdiction of the court.*

In most British colonies, customary law remained a part of the legal corpus provided they were not contrary to *natural justice, equity and good conscience*. The introduction of an external body of laws and the maintenance of local laws occasioned a system based on a plethora of laws. The challenge faced by most previously colonised States has been their inability to embark upon a complete overhaul of their legislative system, resulting in the continued presence of a backlog of antiquated colonial and customary laws. The practical difficulties associated with legislative reform under these circumstances were expressed by the Solomon Islands to the Committee in the following way:

> “Differences in the ways boys and girls are seen under the Penal Code seem to derive from the present-day use of antiquated British laws, e.g. the age of consent for sexual intercourse for girls is 15, but there appears to be no stated age of consent for boys. Many such inequities exist throughout the rules and laws of the country” \(^{57}\).

The inherent bottlenecks occasioned by legal pluralism in the jurisprudential development of affected States have resulted in the need to define the parameters of the “law” within their respective constitutions. A study of some provisions demonstrates a conscious effort to maintain the plural legal foundations of the law which emerged from their pre-colonial, colonial and post-colonial experiences. Thus for many, the common law, customary law, Shari’a and newly enacted laws constitute the package of “law” in present times. Box 1.3.4 provides examples of how some (Kenya, Gambia, Ghana and Sudan) mixed legal jurisdictions have given constitutional expression to the plural nature of their laws.

\(^{55}\) UNICEF study, supra at p.10.


\(^{57}\)IR: Solomon Islands. 12/07/02.CRC/C/51/Add.6.Para.86.
The plurality of sources of laws in mixed legal systems place them at a disadvantage with respect to standards expected under article 4 of the CRC in general, and General Comment 5 in particular. In relation to expectations under the Convention, hurdles confronting countries of this system relate principally to ensuring that colonial, customary and Shari’a law legacies are consistent with the principles and provisions of the CRC. The challenges may be summed up as follows:

1. Review of outdated colonial legislation enacted over long periods of time;
2. Identifying and documenting norms of custom which are inimical to the wellbeing of women and children, with a view to revising them to ensure consistency with the CRC and CEDAW. The un-codified nature of customary law in addition to it’s multi-ethnic dimensions increases this challenge;
3. Narrow interpretations of Shari’a persists and shades of differences may exist within and across States.

These three challenges all present the need for the allocation of substantial resources to enable Law Reform Commissions of different countries to undertake continuous legal reforms in order to ensure a thorough overhauling of penal and civil laws if the CRC is to be effectively implemented.

**Box 1.3.5: Sources of law in Kenya, Gambia, Ghana and Sudan.**

**Kenya:**

The laws of Kenya comprise this Constitution and each of the following to the extent that it is consistent with this Constitution: a. laws enacted under this Constitution; b. Acts of Parliament in force immediately before the effective date; c. any other law that was recognized by the courts as part of the laws of Kenya immediately before the effective date; d. personal laws of the people of Kenya; e. the rules of law generally known as the common law, or the doctrines of equity; as they relate to the practice and procedures of the court; f. the East African Community Law; and g. customary international law, and international agreements, applicable to Kenya- Article 3 A of the Draft Constitution, 2005.

**Gambia**

In addition to this Constitution, the laws of The Gambia consist of – a. Acts of the National Assembly made under this Constitution and subsidiary legislation made under such acts; b. any Orders, Rules, Regulations or other subsidiary legislation made by a person or authority under a power conferred by this Constitution or any other law; c. the existing laws including all decrees passed by the Armed Forces Provisional Ruling Council; d. the common law and principles of equity; e. customary law so far as it concerns members of the communities to which it applies; f. the Shari’a as regards matters of marriage, divorce and inheritance among members of the communities to which it applies.

**Ghana**

The laws of Ghana shall comprise: a. this Constitution; b. enactments made by or under the authority of the Parliament established by this Constitution; c. any Orders, Rules and Regulations made by any person or authority under a power conferred by this Constitution; d. the existing law; and e. the common law. 2. The common law of Ghana shall comprise the rules of law generally known as the common law, the rules generally known as the doctrines of equity and the rules of customary law including those determined by the Superior Court of Judicature-Article 11 (1)-(2) of the 1992 Constitution.
Sudan:

The Islamic Shari'a and the national consent through voting, the Constitution and custom are the source of law and no law shall be enacted contrary to these sources, or without taking into account the nation's public opinion, the efforts of the nation's scientists, intellectuals and leaders- Article 65 of the 1998 Constitution.

This is also in view of the fact that while the Committee has tended to adopt a case-by-case approach to its review of State party reports, its general attitude towards comprehensive review of all aspects of a State party’s laws has been consistently uncompromising. This is evident from the fact that not one single State party has to date been let off on any ground of non-implementation of the CRC, let alone a comprehensive review of its laws to make implementation feasible. Recommendations made by the Committee in response to the situation of the law in the mixed legal system of Gambia as cited in box 1.3.5 is indicative of the Committee’s position.

Box 1.3.6: the Committee’s response to the challenges faced by plural legal systems in relation to legal reforms: a case study of Gambia

…The Committee also acknowledges that the coexistence of various ethnic groups and several legal systems (common law, customary law and the Shari’ a), and the effects of traditional practices not conducive to the rights of the child, are other elements which affect the full implementation of the Convention…While noting that chapter IV of the new Constitution (1997) is entirely devoted to fundamental human rights and freedoms, with a special section on children (sect. 29), the Committee is concerned that domestic legislation, including customary law and the Shari’a, does not fully reflect the principles and provisions of the Convention. The Committee is also concerned that the legislation relevant to children's rights is fragmented in different laws. The Committee expresses concern at the continued existence of customs and traditions which prevent children from fully enjoying their rights.

The Committee recommends that the State party take effective measures, including a thorough review of all existing legislation, to ensure that domestic law, including customary and Islamic laws, fully conforms to the provisions and principles of the Convention on the Rights of the Child.

Against the background of the sympathetic yet uncompromising approach of the Committee to State parties affected by the legacy of mixed legal traditions, affected countries have no choice but to identify local opportunities and strategies for implementation of their treaty obligations. Incidentally, compared to countries of the Islamic, civil law and common law traditions, countries of mixed legal traditions tend to possess more detailed constitutional provisions on children, which could serve as the legal basis for reforms. The constitutions of Ghana, Kenya and South Africa may be cited as frameworks which fully reflect the principles and provisions of the CRC and therefore potentially underpin the drafting of consolidated legislation. In support of this, some of these provisions also spell out the subordinate position of all laws (example, colonial, customary and Shari’ a) in relation to the Constitution. Box 1.3.6 outlines how the 1992 Constitution of Ghana serves as a model for achieving the full integration of the CRC in the context of a plural legal system.

Box 1.3.7: How Constitutions can aid in the harmonisation of domestic law with the CRC under a plural legal system: A case study of the 1992 Constitution of Ghana

58 Refer to Annex A for more examples.
60 The Constitutions of Gambia, Ghana, Malawi and Uganda serve as good examples.
Article 1

(2) This Constitution shall be the supreme law of Ghana and nay other law found to be inconsistent with any provisions of this Constitution shall, to the extent of the inconsistency be void.

Article 26

(1) Every person is entitled to enjoy, practise, profess, maintain and promote any culture, language, tradition or religion subject to the provisions of this Constitution. (2) All customary practices which dehumanise or are injurious to the physical and mental well-being of a person are prohibited.

The ACRWC also serves as a framework for tackling the conflicts and difficulties inherent to legislative reforms across plural legal States, the majority of which are African. By recognising the importance of distinguishing between those aspects of custom which reinforce the rights of the child and those which are inimical, the Charter paves the way for a careful review of customary law in light of the State parties’ commitments under international law. Box 1.3.7 sets out relevant parts of the preamble to the Charter and some aspects of its provisions which collectively serve as the basis for consolidated reforms in favour of children.

Box 1.3.8: The context in which the ACRWC serves as a basis for comprehensive reforms in African plural legal systems

Portions of the preamble

**TAKING INTO CONSIDERATION** the virtues of their cultural heritage, historical background and the values of the African civilization which should inspire and characterize their reflection on the concept of the rights and welfare of the child;

**Article 1(3)**

Any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the present Charter shall to the extent of such inconsistency be discouraged.

The above discussion on the legal contexts within which the majority of State parties to the CRC have carried out legislative reforms now leads the way to a qualitative assessment of the status quo in relation to consolidated children’s statutes.
Part II: The Status Quo of Global Law Reform Efforts

2.1 Countries which have undergone consolidated processes

Global perspectives

Based on the criteria used for identifying existing statutes (supra), an estimated 69 countries, representing 35.7% of the 193 States Parties to the CRC were found to have enacted consolidated children’s statutes, while an additional 31 countries, representing 16% of States Parties are yet to enact such laws based upon an express recommendation of the Committee. In addition to the number of States Parties which have had their statutes passed, four other political entities which are geographically located within other States Parties to the Convention have also carried out consolidation arrangements in favour of children. These are (Goa) which is part of the Federation of India, New Foundland and Saskatchewan which are part of the Federation of Canada respectively and Jersey a Crown Colony of the United Kingdom. At this stage however, the significant observation to be made is that the combined total of all States which have enacted consolidated statutes in addition to those which are yet to do so number up to 100 representing 51.8% of States Parties to the CRC. It may therefore be concluded that the agenda of General Comment 5 for States to consider consolidated children’s statutes as part of overall legislative reform efforts is fast emerging as a trend among States Parties to the CRC.

Perspectives based on regions and legal traditions

The regional distribution of the 68 countries is as follows: Africa (19), Asia (7) Caribbean and Pacific (4), Europe (19), Latin America & the America’s (16) and Middle East (3).

The States may also be distinguished by the following features when viewed from the perspective of their respective legal traditions:

- A total number of three (3) States, (representing 1.5% of States Parties to the CRC) are of Islamic law tradition.
- A total number of 31 States, (representing 16% of States Parties to the CRC are of civil law tradition).
- A total number of four (4) States (representing 2.07% of States Parties to the CRC) are of common law tradition.
- A total number of 30 States (representing 15.5% of States Parties to the CRC) are of mixed legal tradition.

From this analysis, it can be observed that States which subscribe to the civil law in addition to those of the mixed legal tradition form the majority of those with statutes, with the corresponding majority of them being located in Africa, Europe and Latin America. Annex, I provides a full breakdown by region, country and legal tradition.

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61 For clarity, the counting of State parties with consolidates statutes does not include these political entities. The main body of the study however does makes extensive references to these statutes in its drawing of best practices and other areas of concern.
2.2 The role of the Committee

Express recommendations to enact consolidated legislation

It may be inferred from the above that States may be distinguished on the basis of the role played by the Committee in their legislative enactment process. Of all those which have passed consolidated statutes, a total number of 12, representing 6.2% of States parties to the CRC based their reforms on express recommendations of the Committee. The extension of the same type of recommendation to an additional 31 States Parties to the CRC has also been noted. The various stages at which the Committee released its recommendations to affected States Parties must also be noted. Three States Parties, namely Benin, Burkina Faso and Mauritania received their recommendations upon submission of their initial reports, while the remaining did so upon submission of their second and third periodic reports. The remaining 56 countries which embarked upon reforms without an express recommendation of the Committee represent 29% of States Parties to the CRC. Table 2.2 provides a summary of this situation.

Table 2.2: Showing a summary of the current status of country statutes

<table>
<thead>
<tr>
<th>Consolidation in relation to express recommendations of the Committee</th>
<th>State Parties and other political entities</th>
<th>No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Parties and states which have enacted consolidated children’s rights statutes without express recommendations of the Committee. 62</td>
<td>Argentina, Armenia, Azerbaijan, Belarus, Bolivia, Botswana, Brazil, Bulgaria, China, Colombia, Costa Rica, Dominican Republic, Ecuador, Egypt, Estonia, Ghana, El Salvador, Guatemala, Honduras, Hungary, Iceland, Indonesia, Ireland, Jamaica, Jordan, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Malawi, Malaysia, Maldives, Mali, Mexico, Myanmar, Namibia, Nepal, New Zealand, Nicaragua, Nigeria, Pakistan, Palestine, Paraguay, Peru, Romania, Russian Federation, Sierra Leone, Singapore, South Africa, Trinidad and Tobago, Tunisia, Turkmenistan, Uganda, United Kingdom, Uruguay, Venezuela, and Yemen.</td>
<td>57</td>
</tr>
<tr>
<td>State Parties which have enacted consolidated children’s rights statutes in response to express recommendations of the Committee.</td>
<td>Belize; Burkina Faso, Gambia, Haiti, Kenya, Lesotho, Libya, Mauritius, Panama, Thailand, Togo and Uzbekistan.</td>
<td>12</td>
</tr>
<tr>
<td>Sub total</td>
<td>69</td>
<td></td>
</tr>
<tr>
<td>State Parties which are yet to enact consolidated children’s rights statutes in response to express recommendations of the Committee.</td>
<td>Algeria, Benin, Bhutan, Burundi, Cameroon, Chad, Congo, Cote d’ Ivoire, Democratic Republic of Congo, Gabon, Georgia, Grenada, Guinea, India, Iraq, Israel, Kuwait, Laos, Marshall Islands, Micronesia, Mozambique, Niger, Oman, Overseas Territories of the United Kingdom of Great Britain and Northern Island, Palau, St. Kitts and Nevis, St. Vincent &amp; Grenadines, Suriname, Tanzania, Zambia and Vanuatu.</td>
<td>31</td>
</tr>
<tr>
<td>Grand total</td>
<td>100</td>
<td></td>
</tr>
</tbody>
</table>

62 All four (4) political entities, Goa, Jersey, Newfoundland and Saskatchewan also enacted their statutes without an express recommendation of the Committee.
The question as to what factors have influenced the Committee in the making of specific recommendations for consolidated statutes and hence the basis for its formulation of General Comment 5 needs to be asked. Based on the collective reasoning of the Committee educible from Appendix 2, the following three broad interconnected reasons may be proposed:

1. The existence of fragmented laws, making it difficult to engender harmonisation with the CRC, often resulting in delays in implementation of the rights of the child at national level.
2. The above has been accentuated by the plural legal base of the legal systems of several countries, serving as structural barriers to the effective harmonisation of domestic law with the CRC.
3. Even where the legal system concerned is not of the plural kind, specific provisions of customary law, common law, civil law and Shari’a tend to be in disharmony with the principles and provisions of the CRC (see box below in respect of Albania and Bahrain).
4. The Committee has recognised the cost implications of legislative reforms and views consolidated processes as a more cost-effective means of achieving harmonisation with the CRC given that they serve as an opportunity for reviewing all the laws in relation to children in a more holistic fashion, albeit on the basis of continuation. The sensitivity to which the Committee has attached the issue of cost may be appreciated from the perspective that the States to which express recommendations have been made have substantially been in respect of those undergoing economic and political transition. In the case of Albania, (a civil law country) the Committee observed difficulties that the State party was encountering in dealing with customary law and traditional codes (Kanun) in its efforts to ensure implementation of the relevant legislation. Equally, the Committee has recommended consistency and harmony with the CRC in the application of Shari’a as may be seen with respect to its observations and recommendation to Bahrain (a Shari’a country). Here the Committee noted specifically that it was concerned that in the case of Muslims the Shari’a Court system—which applies Shari’a a personal law (marriage, divorce, custody and guardianship, inheritance, maintenance) and criminal law—lacks many basic and minimum international safeguards and procedures, including those contained in the Convention, without which the right to a fair trial or adequate access to the courts can be guaranteed in practice. In particular, that: Shari’a remains uncodified and is applied in its classical sense without reference to State legislation; and because it is uncodified the system may be subject to arbitrariness, inconsistencies, and lack of uniformity between judgements between different qadis, or judges; between Shi’a and Sunni departments; and disparities with decisions of the secular courts. The Committee recommends that the State party conducts a comprehensive review of its domestic laws, administrative regulations and procedural rules, including Shari’a, to ensure that they conform to international human rights standards.63

Despite the uncompromising approach of the Committee, there have nevertheless been situations in which it failed to make a definitive recommendation for a consolidated statute to be passed even where comparable situations may have existed among States, thereby leading to some uncertainty as to whether it is adopting a wholesale or a case-by-case approach to the consolidated method of legislative reforms in favour of children. Separate case studies of Mongolia and New Zealand demonstrate that the Committee did not make an express recommendation for consolidated statutes even where the prevailing circumstances appeared to be similar to other countries.

63 CO: Bahrain. 07/02/02.CRC/C/15/Add.175. Para.5.
**Box 2.2.1: Case studies from Mongolia and New Zealand on the case by case approach of the Committee**

**Mongolia**

The Committee welcomes a comprehensive law reform in the State party, including various legislative measures taken to strengthen the protection of children’s rights. Notwithstanding the positive steps taken by the State party in the field of domestic legislation, the Committee is concerned at the insufficient number of implementation measures, which tend to form a gap between law and practice. In addition, the Committee is concerned about some contradictory provisions of the domestic laws leaving children without adequate protection, e.g. the compulsory school age is 17, whereas the labour law allows children aged 14 and 15 years old to work 30 hours per week. The Committee recommends that the State party take all necessary measures, including the provision of adequate financial and human resources, for the effective implementation of its domestic legislation, including recently adopted laws. It also recommends that the State party review its domestic laws in order to identify possible gaps in the protection of children.\(^\text{64}\).

**New Zealand**

The Committee regrets that the State party’s approach to the rights of the child appears to be somewhat fragmented, as there is no global policy or plan of action which incorporates the principles and provisions of the Convention, encompassing all the areas covered by the Convention. The Committee notes with concern the lack of conformity of relevant domestic laws with the definition of the child under the Convention, especially with regard to the minimum age for charging a child with serious offences and the minimum age of access to employment.\(^\text{65}\) Noting that the State party has undertaken a general review of its legislation to ensure its compatibility with the 1993 Human Rights Act (Consistency 2000), the Committee regrets that this did not include a comprehensive review of its legislation affecting children and that domestic legislation does not fully conform to the principles and provisions of the Convention. The Committee reiterates its recommendation that the State party initiate a comprehensive review of all legislation affecting children and take all necessary measures to harmonize its legislation with the principles and provisions of the Convention.\(^\text{66}\).

Taking the peculiar circumstances of each State into account as a means of establishing the appropriateness of consolidated statutes has also been the view of the African Child Policy Forum\(^\text{67}\) expressed at the International Policy Conference on the African Child and the Family in 2004:

> While we advocate for comprehensive law reform relating to children, the choice between consolidation of all laws relating to children (that is, a single comprehensive children’s statute) or separate thematic statutes e.g. on child justice etc is dependent on the particular context of each country. The ultimate goal of either process should be to ensure comprehensive provision for the rights of children in the most user-friendly and effective manner.\(^\text{68}\).

Yet while this approach is to be encouraged due to the peculiar circumstances of States, the rendering of different recommendations by the Committee in situations where the same or similar conditions seem to be prevailing within two or more States, could result in unpredictability and uncertainty in its work. This therefore calls for an urgent need for the Committee to pay due attention to the criteria it has been using for the making or such recommendations, with a view to allowing for a greater measure of uniformity in its work.

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\(^{64}\) CO: Mongolia. 21/09/2005.CRC/C/15/Add.264. Paras. 9 & 10.  
\(^{65}\) CO: New Zealand. 24/01/97. CRC/C/15/Add. 71. Paras. 9 & 10.  
\(^{67}\) The African Child Policy Forum is an independent, pan-African advocacy organisation working for the realisation of children’s rights.  
Where reforms have proceeded in the absence of an express recommendation

It has already been noted that a total number of 43 State parties have received an express recommendation from the Committee to pass consolidated laws on children, while those who proceeded without such a recommendation number up to 57. Apart from the fact that the majority of the latter are constituted by civil law countries whose systems make it easier for the adoption of such statutes, it nevertheless becomes important for an assessment of the possible role that the Committee may have played in their law reform efforts. This point stems from the fact that the advisory role of the Committee may not always be apparent from its proceedings and hence its exact role in the law reform effort may not always be evident from a mere reading of its general observations and recommendations. Mexico serves as a case study of a situation in which a recommendation to enact a comprehensive code upon submission of its initial report was not clearly spelt out in the first observations and recommendations of the Committee but which was noted to have been implied by the Committee at a later stage. The following sequence of events bear testimony to this:

“The government must take all necessary steps, in all areas, to ensure the respect and actual implementation of the provisions contained in national legislation relating to the rights of the child. Furthermore, the Committee recommends that the State party takes necessary steps to fully harmonize federal and state legislation with the provisions of the Convention. Principles relating to the best interests of the child and the prohibition of discrimination in relation to children should be incorporated into domestic law, and it should be possible to invoke them before the courts”69.

In the above, no mention is made of the need for Mexico to enact such a statute. However, consequent to a later submission of the State party’s second periodic report, the Committee used the opportunity to explain that this earlier (above) recommendation was designed to encourage the State party to enact such a law. This to be appreciated from the following position taken by the Committee in 1999 when Mexico submitted its second periodic report.

“While noting the measures taken by the State party to implement the Committee's recommendation (CRC/C/15/Add.13, para. 15) concerning the need to harmonize domestic legislation with the Convention, in particular in relation to the process for enacting the Child Protection Code, the Committee remains concerned that current domestic legislation on children's rights, both at the federal and State levels, does still not reflect the principles and provisions of the Convention and that measures taken to harmonize domestic legislation seem somewhat fragmented and do not take into consideration the holistic approach of the Convention.”70

The Mexican experience demonstrates that in some situations the nature of the Committee’s recommendations may be more implied than express and where doubts arise, States Parties must be proactive in seeking better and further particulars from the Committee on their exact meaning.

69 CO: Mexico. 07/02/94.CRC/C/15/Add.13. Para.15.
Other factors influencing the enactment of consolidated statutes

In addition to the direct influence of the Committee, the following inter-related factors and events may be said to be associated with the present global situation with the enactment of consolidated statutes:

1. A growing appreciation of the principles and provisions of human rights through concerted advocacy. The general principles of human rights (universalism, indivisibility and interdependency) collectively connote the need to maintain cohesion in the law reform process. In Gambia, a report on the harmonization of national laws with the CRC significantly indicates that the CRC “can be said to be the most comprehensive international legal instrument aimed at the protection of particular section of our society...This Convention constitutes the most complete and comprehensive international statement of children’s rights in modern times. Hence, it has become the duty of the Gambia to take measures to implement the provisions of the Convention in its entirety since the Gambia has not made any reservations vis-à-vis any of the provisions of the Convention.” In Ghana and Uganda, child law review committees which were set up with the mandate to submit proposals on how to satisfy State compliance with the CRC, based their recommendations for a consolidated statute on the need to ensure that the principles of non-discrimination, best interests, participation and survival and protection were fully present and operational.

2. There is also evidence to suggest that advocacy events preceding and following the 1990 World Summit on Children left the imprint of comprehensive policy and legislative frameworks in the minds of heads of states and governments who participated in the summit. Following the event, countries such as Maldives Namibia and Nicaragua engaged in processes leading to the formulation of comprehensive National Programmes of Action (NPA) with integrated components on consolidated legislation.

3. The convenience of enacting a single comprehensive instrument may also be cited as another factor. The existence of a multiplicity of laws affecting children across different instruments has prompted many State parties to consider the adoption of a single one stop document in their pace. This has been observed to be in the best interests of children in view of their potential to spell out sectoral responsibilities more clearly. By the time it submitted its initial report to the Committee in 1997 (five years prior to the enactment of the law), Mali recognised the existence of many legal texts on children and the fact that they conformed to the provisions of the CRC. However, a study on the harmonization of national law with the provisions of the CRC revealed the need to formulate a “code on the well-being and protection of children.”

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73 Example, see IR: Uganda. 17/06/96.CRC/C/3/Add.40. Para. 2-5.
74 IR: Maldives. 05/08/96.CRC/C/8/Add.33.Para.4.
76 IR: Nicaragua.09/03/94.CRC/C/3/Add.25 PARA.1
4. Enacting a consolidated law would also facilitate the effective *awareness* of child rights across different stakeholders and interests groups, on the basis that the existence of one holistic reference document as opposed to a set of scattered laws would make this easier.

5. Lastly, the language and structure of the CRC provides a logical reason for States to consider the enactment of single statutes. The use of words such as *shall* and *undertake* across a substantial number of articles, elicits a sense of urgency in producing legislation on all aspects of the CRC. When States are impressed upon to initiate legislative action in line with the Convention therefore, the production of a single document ideally comes to mind.

**Conceptual issues: What are the differences between “comprehensive rights-based approaches,” comprehensive reviews, comprehensive children’s codes and “consolidated legislation”?**

As a human rights body, the Committee has been driven by general and specific human rights principles and provisions affecting the rights of the child, occasioning the application, interpretation and mainstreaming of these in it’s every day work. This sub part examines how the Committee has applied important human rights concepts in its work, by specifically reviewing the Committees application and interpretation of the concepts of *comprehensive rights-based approaches, comprehensive reviews, comprehensive children’s codes and “consolidated legislation”* and determines how these potentially impact on the Committee’s depth of contribution to the development of international child rights law.

**a. The rights-based approach**

The Committee has often indicated that the enactment of legislation (whether consolidated or otherwise), in line with the principles and provisions of the CRC, is consistent with the “rights based approach.” This has been mentioned in both the concluding observations and recommendations to State parties which have or have not received recommendations to enact legislation along consolidated lines. The nexus between the rights-based approach and consolidated children’s statutes has been made in respect of Belarus, Bhutan, Cameroon, Czech Republic, Georgia, Grenada, Libya, Malawi, Myanmar, Oman and Uzbekistan, all of which have received expressed recommendations (see Appendix 2 for full details), in addition to Brunei, Hong Kong and Korea who have not.

However, there is also evidence to show that the Committee has used it in relation to other areas of CRC implementation, particularly policy making, participation and dissemination of the CRC. While the exact parameters of the approach have not been defined by the Committee, in the following observation on the law of Libya, the Committee links the approach to the position of children as subjects of rights:

“The Committee notes the adoption of the Child Protection Act No. 5 of 1997, in addition to the numerous other laws and decisions that have been adopted with a view to improving the welfare of children. It is concerned, however, that many measures reflect a predominantly *welfare- rather than rights-based approach*.

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78 Sometimes spelt out as the “comprehensive,” “broad” or “holistic” rights-based approach as the various case studies show.
The Committee reiterates its concern that several rights contained in the Convention (e.g. non-discrimination, the best interests of the child, rights concerning juvenile justice) are not adequately reflected in the laws, including personal status laws.”

A further understanding of this may be gained from the following country case studies showing different contexts in which the “rights-based approach” has been used:

1. **In the design of legislation: Brunei**

   The Committee notes the adoption of various legislative measures with respect to children’s rights (e.g. the 2000 Children’s Order, the Emergency Islamic Family Order, the Islamic Adoption of Children Order and the 2001 Adoption of Children Order), but remains concerned that they do not sufficiently reflect a **comprehensive rights-based approach** to the implementation of the Convention. The Committee recommends that the State party: (a) Undertake a comprehensive review of existing legislation from a rights-based perspective, to ensure its conformity with the principles and provisions of the Convention.

2. **In the design of Policy: Oman**

   “…pursue the preparation and development of a **comprehensive rights-based** national plan of action for the implementation of the Convention…”

3. **Recognition of the intrinsic character of the CRC as a human rights instrument in dissemination programmes: Grenada**

   (...) the Committee remains concerned that professional groups, children, parents and the public at large are generally not sufficiently aware of the Convention and the **rights based approach** enshrined therein.

4. **In the involvement of civil society in CRC implementation: the Democratic Republic of Korea**

   The Committee is concerned that despite its previous recommendations, insufficient efforts have been made to involve civil society in the implementation of the Convention, its **rights-based approach** and its reporting process.

The Committee has also extended this requirement to other issues affecting children. References can be made to General Comment 3 on HIV/AIDS and the rights of the child and its discussion outcomes on Early Childhood and the rights of indigenous children respectively as demonstrated below:

1. **General Comment 3 on HIV/AIDS and the rights of the child** notes in particular that:

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79 In the case of Libya, the Committee noted that the absence of a rights-based approach could lead to charitable interventions: It noted for example that the adoption of the Child Protection Act No. 5 of 1997, in addition to the numerous other laws and decisions had not reflected the principles of the CRC and therefore reflected a predominantly welfare- rather than rights-based approach. See Annex A for full details.
the Convention, and in particular the four general principles with their comprehensive approach, provide a powerful framework for efforts to reduce the negative impact of the pandemic on the lives of children. The holistic rights-based approach required to implement the Convention is the optimal tool for addressing the broader range of issues that relate to prevention, treatment and care efforts.

2. The Committee’s Day of Discussion on Implementing Child Rights in Early Childhood noted that:

(...) States parties are urged to adopt comprehensive and strategic plans on early childhood development within the rights-based framework, and accordingly, increase their human and financial resource allocations for early childhood development services and programmes.

3. The Committee’s Day of Discussion on the rights of indigenous children resulted in the following observations being made:

(...) States parties could be recommended, as good practice, to adopt a broader rights-based approach to indigenous children to complement the CRC including other relevant standards such as ILO Conventions 138, 169 and 182.

Recommendations by the Committee on the adoption of the rights-based approach within the contexts outlined above indicate that the Committee expects States Parties to adopt measures that will give full meaning to the principles and provisions of the CRC in their entirety. While legislation is an important measure in this regard, it is by no means the only one. Complementary measures such as appropriate policies, institutional reforms, the allocation of resources and the ratification of other human rights instruments are also to be considered by States Parties as constituting a package of ingredients for the implementation of the rights of the child.

b. “Comprehensive review” of laws

Apart from the rights based approach, the Committee has also often made reference to “a comprehensive review of all domestic legislation and related administrative guidance to ensure full compliance with the Convention.” This is reflected in General Comment 5 (see box 1) and is consistent with the overarching rights-based framework, in so far as its basis lies in the need for legislation to reflect “the principles and provisions of the CRC.” The Committee also reinforces the need to ensure that the process of law reform (the means) is given just as much importance as the substance (the end product). Based on General Comment 5, consolidated children’s statutes are to be appreciated from the perspective that they are intended to represent a part of and not the whole of the legislative framework for children. To demonstrate this, reference may be made to the concluding observations and recommendations of the Committee in response to the initial report of the Maldives in which it noted that the enactment of the Law on the Protection of the Rights of the Child (Law
By placing consolidated statutes within the general framework of legislative reforms, the Committee, through its General Comment 5, conveyed its understanding of the law as a dynamic and responsive tool, encompassing constitutional, penal and civil segments. It is to be expected therefore, that some aspects of the CRC domestication process would cut across penal codes, family codes, civil codes and other national instruments. As illustrated in Figure 1.6.1 below, the crucial test at the end of the day would be whether all the laws collectively meet the standard of comprehensiveness, i.e. the full compliance with the principles and provisions of the CRC. Consideration for the enactment of a consolidated law could be considered as one major step towards achieving this.

Figure 1.6.1:

<table>
<thead>
<tr>
<th>Constitutional reforms</th>
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<tbody>
<tr>
<td>Legislative reforms</td>
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<tr>
<td>- Consolidated children’s statutes</td>
</tr>
<tr>
<td>- Penal laws</td>
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<td>- Sectoral laws</td>
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<td>Comprehensive legal standards</td>
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<td>Processes</td>
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<td>Other legislative efforts</td>
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<td>- Legislative instruments</td>
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<td>- Administrative directives</td>
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<tr>
<td>- Review of customary law</td>
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<tr>
<td>- Review of Islamic Interpretations</td>
</tr>
<tr>
<td>Principles and provisions of the CRC</td>
</tr>
</tbody>
</table>

c. “Consolidated children’s rights statutes” vs. “Comprehensive consolidated laws”

In a substantial number of situations, the Committee has recommended the enactment of “comprehensive children’s statutes” as opposed to “consolidated children’s rights statutes” expressed in General Comment 5. This raises questions as to whether the Committee has viewed the term “consolidation” to mean the same as “comprehensive” and if not, whether it has been driven by factors other than Comment 5 to vary the specific wording of its General Comment. Significantly, the recommendation to enact “comprehensive children’s statutes” has been extended to a substantial number of States (see Appendix 2 for more details).

80 CO: Maldives. 05/06/98.CRC.C.15/Add 91. Para. 3
81 Algeria, Belize, Benin, Bhutan, Burkina Faso, Cameroon, Chad, Cote d’Ivoire, Gabon, Gambia, Grenada, Israel, Lesotho, Malawi, Marshall Islands, Mauritius, Mozambique, Oman, Palau, St. Kitts & Nevis, Suriname, Tanzania, Thailand, Togo, United Kingdom and Great Britain and Northern Ireland (Territories), Uzbekistan, Vanuatu and Zambia.
Congo, Georgia, Guinea, Haiti, India, Iraq, Kuwait, Laos, Libya, Micronesia, Niger, Panama and St. Vincent and Grenadines with slight variations. For purposes of contrast, three country cases studies are cited in box 1.6.3.

Box 2.2.2: showing different examples of how the Committee has crafted Recommendations to enact consolidated children’s rights statutes.

**Cameroon:**

“…In that respect, the Committee recommends that the State party: (a) Take steps, using a rights-based approach, to harmonize existing legislation, including customary law, with the Convention; (b) Consider the adoption of a comprehensive children's code, reflecting the general principles of the Convention on the Rights of the Child; (c) Adopt a comprehensive family code.”

**Congo:**

The Committee recommends that the State party improve and harmonize its legislation in order to achieve compliance with the principles and provisions of the Convention, and adopt a comprehensive Child Protection Code which incorporates the rights enshrined in the Convention.

**Israel:**

The Committee encourages the State party: (b) To consider the adoption of a comprehensive children's code, which would incorporate the principles and provisions of the Convention.

In the case of Cameroon, the Committee is reinforcing the need for the adoption of “a rights-based approach”, which includes full harmonisation of all laws (including customary law), with the CRC. In addition, the Committee also makes two recommendations with respect to a) the adoption of “a comprehensive children’s code” and b) the adoption of “a comprehensive family code.” The case of Cameroon could be taken as an example of how the Committee has intended to place consolidated statutes within the overall framework of legislative reforms, given that it was also tasked to carry out a similar initiative in the field of family law.

The recommendation to Congo raises even wider questions as to the distinction between a comprehensive child protection code, a comprehensive children’s code and a consolidated child rights statute. However, in line with an earlier observation made that the Committee has not exhibited consistency where country situations are similar, it is pertinent to observe that the recommendation to Congo to pass a law based on child protection was at variance with that made to Jamaica in which the Committee noted as follows:

The Committee recommends that the State party urgently take all necessary measures to expedite the adoption of the draft Child Care and Protection Act, ensuring that it is in compliance with the provisions of the Convention …The State party is also encouraged to consider, in this respect, that the new legislation should cover children’s rights rather than solely protection provisions and to ensure that all rights of the child are part of the national legislation.

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84 CO: Israel.09/10/2002.CRC/C/15/Add.195. Paras. 8-11. The Committee was also concerned about the existence of religious laws which conflicted with the CRC. See Para. 10.
The sequence of events between Congo and Jamaica demonstrates that in the former, the Committee was considering a consolidated law based upon a narrow integration of the CRC, whereas in the case of Jamaica, it was considering a more holistic legal standard. Finally, in the case of Israel, the recommendation was for “a comprehensive children’s code”, which is also potentially different from what General Comment 5 enunciates.

No clear reasons have been cited by the Committee for these different recommendations. However three possibilities may be suggested for these developments:

Firstly, they may represent an unarticulated concern by the Committee that States Parties could potentially treat consolidated laws as an end in themselves as opposed to a means of realising the rights of the child. Hence, by using the terms comprehensive and rights-based approach in the majority of instances compared to consolidation, the Committee may be seeking to emphasise that statutes would still be measured by their consistency with the principles and provisions of the CRC. In this light, it may be reasonable to assume that the Committee has been using the instrumentality of the CRC to ensure that consolidated laws do not become fanciful or fashionable tools of legal reforms in favour of children but effect frameworks for securing their rights. Secondly, the Committee may be perceiving that consolidated laws stand the risk of being unresponsive to new international legal developments in situations where they serve as the primary source of law on child rights (as the case may be in some States such as the Gambia, Nigeria and Uganda). By reiterating the comprehensiveness standard, the Committee may have been urging States to ensure that their statutes respond to new developments in international law. Finally, the application of these terms in an interchangeable manner may be the Committee’s way of expressing its medium to long term vision of encouraging all States to encapsulate all the principles and provisions of the CRC into one single instrument.

The variations identified above nevertheless occasion the need for the Committee to clarify its position by shedding more light on the differences in meaning of these different concepts especially in the light of General Comment 5.
Part III: Perspectives on Consolidated Reforms: Processes and Contents

This Part provides an overview of the general processes and contents associated with consolidated legislative reform efforts.

3.1 The process of reform

3.1.1 Ratification of the CRC

Ratification of the CRC appears as a general first step towards reforms across a substantial number of State parties, most of which give expression in one form or another to the CRC as their driving force. Brazil is a unique example of a State which applied the draft of the Convention on the Rights of the Child, then under discussion by a working group appointed by the United Nations General Assembly, as its initial tool for the design of both its constitutional provisions on children and adolescents, followed by its statute. The direct association between ratification of the CRC and enactment of consolidated statutes among a substantial number of States however suggests that the CRC has been a compelling and significant international legal framework for the enactment of consolidated children’s laws around the world, and given the rate at which “consolidation” is becoming the practice, it would be reasonable to predict that the concept would spread to many more jurisdictions in the not too distant future.

3.1.2 Reviews conducted under the broad mandate of international law

While legislative reforms have been conducted under the specific umbrella of the CRC, it is significant that some countries have also taken account of obligations and commitments under other global standards. While working within the ambit of the CRC, the Committee has consistently recommended the ratification of all other human rights instruments relevant to the advancement of children. In addition, references have also been made by the Committee to General Comments and Guidelines of other human rights treaty bodies (example the CEDAW and Human Rights Committees). Thus, in most law reform efforts, State parties have also taken account of their obligations under other treaties, particularly CEDAW, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the African Charter on the Rights and Welfare of the Child.

3.1.3 Impact of constitutional provisions on the law reform process

The constitutional legal standards with respect to ratification of treaties in civil law countries have tended to simplify the process leading to the domestication of the CRC by contrast to other legal traditions.

In the case of Estonia, for example, accession to the CRC was effected by a resolution of the Supreme Council on 26 September 1991. The Estonian situation was also hastened by an intensive period of law reform, resulting in the passage of both the Constitution and the Act.
During this period, the Supreme Court was also active in the application of the CRC in judicial decisions. For instance the 1996 Non-Profit Associations Act was declared unconstitutional and inconsistent with the CRC in view of the fact that it restricted the rights of children to form associations and to participate in their management.  

Similarly, in the case of Haiti, following ratification in December 1994, the CRC was subsequently published in *Le Moniteur*, the official gazette of the Republic of Haiti, on 7 July 1995. By these two acts, the Convention was officially incorporated into Haitian law. This is based on the provisions of article 276-2 of the Constitution, which states that once *international treaties or agreements are approved and ratified in the manner stipulated by the Constitution, they become part of the legislation of the country and abrogate any laws in conflict with them*. Consequently, all the provisions of the CRC can be fully invoked before the courts.  

The relatively higher degree of detail accorded by mixed legal traditions to children’s rights within their respective constitutional provisions has provided an important leeway towards consolidation. In this respect, Ghana can be cited as a model example because of the express mandate that its Constitution provides for the passage of a holistic law on children.

**Box 3.1.3: Provisions on specific constitutional mandate from Ghana**

(1) *Parliament shall enact* such laws as are necessary to ensure that –

(a) Every child has the same measure of special care, assistance as is necessary for its development from its natural parents except where those parents have effectively surrendered their rights and responsibilities in respect of the child in accordance with the law;

(b) Every child whether or not born in wedlock shall be entitled to reasonable provision out of the estate of its parents;

(c) Parents undertake their natural right and obligation of care, maintenance and upbringing of their children in cooperation with such institutions as Parliament may, by law, prescribe in such manner that in all cases the interests of the children are paramount;

(d) Children and young persons receive special protection against exposure to physical and moral hazards; and

(2) Every child has the right to be protected from engaging in work that constitutes a threat to his health, education or development.

(3) A child shall not be subjected to torture or other cruel inhumane or degrading punishment.

(4) No child shall be deprived by any other person of medical treatment, education or any other social or economic benefit by reason only of religious or other beliefs.

(5) For the purposes of this article, 'child' means a person below the age of eighteen years (emphasis provided).

This express legislative mandate to the Parliament of Ghana was used by various civil society organisations and international agencies (for example UNICEF and the Save the Children Fund U.K) to advocate for a consolidated law on children.  

**3.1.4 Legal reforms initiated under the auspices of multisectoral bodies**

Some State parties initiated reforms under the leadership of a co-ordination agency with an express mandate to conduct legislative reviews of laws. The multi-sectoral nature of these bodies tended to influence the enactment of consolidated codes. In some cases, such as

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85 IR. Estonia. 11/07/2002.CRC/C/8/Add. 45.Para.1
86 IR. Haiti. 21/06/2002.CRC/C/51/Add.7. Paras. 9&10.
87 These facts are personally known to the author.
Egypt, Ghana, Kenya and Uganda, reforms were initiated through committees specifically set up for such purpose. In the cases of Uganda and Ghana for instance, child law review committees were set up with a view to reviewing all existing laws on children within the context of the principles and provisions of the CRC and other international texts. To inform the process, these committees carried out extensive research and consulted widely among various interest groups across state actors and civil society.

At the time of the legislative reform efforts in Ghana, the institution responsible for co-ordinating services, advocacy and legislative reforms for children was the Ghana National Commission on Children. Its functions were administered through the combined multisectoral efforts of the Ministries of Health, Education, Foreign Affairs, Information, the Commissions on Culture and the Commission on Human Rights and Administrative Justice. The cross-sectoral and interdependent nature of its work provided it with a natural leaning towards drawing up law reform which more effectively reflected the principles and provisions of the CRC. The committee which eventually undertook the law reform process also drew representation from civil society.88

In Kenya, the Attorney-General directed the Kenya Law Reform Commission to review the existing laws concerning the welfare of children and to make recommendations for improvement so as to give effect to the Convention. Although the commission had, as far back as 1984, embarked upon a review of laws relating to children, the process was hastened by Kenya’s ratification of the Convention. In 1991, the commission set up a multisectoral and multidisciplinary task force consisting of state actors, children’s rights advocates, experts and representatives of key child welfare organizations, and academics. A result of the process of consultation was the realisation that the first draft of the Bill on its consolidated law was not progressive and failed to implement the provisions of the CRC. Suggestions were therefore made to transform the Bill into a more child-friendly document and integrate an institutional framework that would enhance protection of all children inside and outside the family environment.89

3.1.5 Participation and dissemination

Stakeholder participation in the actual design of consolidated statutes themselves tends to differ across State parties. Among Shari’a, civil law and common law countries, participation has tended to take place at different points preceding and following the ratification of the CRC, rather than at the point of enactment of domestic law. Countries operating under plural legal systems, however, tend to adopt a comparatively inclusive approach to the enactment process in view of the multiple interests (especially customary and religious) has required a more all-encompassing approach to participation. Reference is specifically being made to some of the sensitive cultural and religious issues which surface during reforms, among them including matters relating to marriage, child participation and traditional practices, leading to the active involvement of traditional and religious rulers and other civil society groups. This concerns and levels of participation have also sparked the active engagement and involvement of the media. Although State and non-State actors have been visibly involved in processes leading to reforms, State party reports indicate limited active participation of

88 These facts are personally known to the author.
children, although there is, however, evidence to suggest that countries such as Botswana, Ghana, Kyrgyzstan, Tanzania, and Nigeria have done so at some stage in their law reform processes. The experiences of Kyrgyzstan and Nigeria demonstrate the potential impact of child participation on such processes.

Box 3.1.5: Showing the effect of child participation in law reform processes: case studies from Kyrgyzstan and Nigeria

Kyrgyzstan

In Kyrgyzstan, a National Children’s Forum dubbed, “State of the Kyrgyzstani Children: Realities and Perspectives” was organized in December under the auspices of the President’s office. Involving over 600 delegates representing government, non-governmental organizations and other civil society organizations, children’s groups and donors, the Forum reviewed the most critical issues affecting children’s survival, development, protection and participation. Unusually frank and open discussions focused on deep rooted issues of poverty, social exclusion, child abuse and neglect, institutionalization, and protection. The Forum was able to reach a common understanding of problems preventing children attaining their rights. Delegates also agreed on the priority interventions required to create a more enabling environment in support child welfare and protection...UNICEF also supported a televised debate on the Child Code between children and Parliamentarians.95

Nigeria

Children fully participated and made their own points of view known, through their presentation titled: “Voices of Nigerian Children”, urging the Parliamentarians to pass the legislation in order to guarantee the future for the Nigerian child...After the Public Hearing, arrangements were made for the children to pay courtesy calls on the President of the Senate and the Speaker of the House of Representatives, urging both functionaries to ensure the prompt passage of the Bill into law in their respective Houses. Meanwhile, during the proceedings for the debate and consideration of the provisions of the Bill, children were made to sit in the Galleries of both Houses, and the children sat there watching the proceedings throughout. This was designed to put pressure on the members, as most of them were constrained from speaking against the Bill in the presence of the children. With the level of advocacy which had been put in place, and the presence of the children during the proceedings in the two Houses, the passage of the Bill into law in the shortest possible time was now assured. And the Senate, on its own part, passed the Bill on the day immediately after its passage by the Lower House.96

Once the laws were enacted, most States embarked upon intensive campaigns aimed at disseminating the contents of their respective laws across a broader spectrum of the society. In its initial report, Brazil noted, for instance, that the social mobilization behind the passing of the statute constituted a factor of the greatest importance in ensuring that children’s rights received the dissemination that they deserve.97

3.2 General features of consolidated children’s rights statutes

This sub part provides a comparative overview of the contents of existing and proposed statutes in the light of General Guidelines submitted by the Committee on “the form and content of initial reports to be submitted by State parties” under article 44, paragraph 1(a) of

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91 This is within the personal knowledge of the author.
96 Ibid at pages 15-18.
the Convention. It deals with the general characteristics of existing statutes followed by a more detailed examination of some of their special features.

3.2.1 Scope and nature of statutes

The following three broad classifications of consolidated statutes emerge from an analysis of their contents:

1) **General frameworks** with express or implied intentions to carry out further legislative reforms in the future. This type of legislation has been adopted mainly by Eastern European countries, especially those of the former Soviet Union and some Latin American countries. All countries identified under this category belong to the civil law tradition. In all cases, the intention of the legislature was to provide a broad framework for future detailed legislative action in relation to the provisions. The statute of Lithuania, for instance, expressly indicates that “laws and other legal acts shall be adopted and implemented and that appropriate state and municipal institutions shall be created and tasked with implementation of protection of rights of the child.”

UNICEF Kyrgyzstan also made the following observations with respect to its country statute for which it provided pre and post-enactment technical support:

“The implementation of the Child Code will necessitate the development of other child and family oriented public policies and secondary legislation for its implementation and for the establishment of new local administrative structures. UNICEF is already positioning itself as the major technical supporter for developing these policies and legislation. UNICEF has commissioned a desk review of the existing national policies and provisions on alternative care arrangements. Its outcome represents the baseline for further the development of secondary legislation on social services for children (Guardianship, Foster care, Adoption, Day care Centres, Family-type homes).”

It must be noted, however, that this type of legislative action still remains enforceable by the courts of respective countries, the absence of specific legislation in relation to a particular issue notwithstanding.

2) **Frameworks based on Child Protection** have been adopted by the majority of States, constituted by a blend of all the legal systems. The core features of these laws relate to matters of child protection, of which child maintenance, custody, access, adoption, juvenile justice administration and varied forms of abuse and exploitation constitute common areas of concern. However, while protection may be the central focus, some of these statutes also integrate one or more principles of the CRC and thereby take account of other issues.

3) **Frameworks which take account of the civil and political rights in addition to the social and cultural rights of children.** These tend to be the more encompassing statues, which adopt a substantial portion, if not all of the provisions of the CRC. The Latin American region accounts for the majority of such statutes. It is also of interest that three African

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98 Article 6(2)-(3).
99 See UNICEF Kyrgyzstan report at p.3.
100 Refer to sub part above on two different views expressed by the Committees with respect to child protection frameworks: cases studies of Congo and Jamaica.
countries (the Gambia, Lesotho and Nigeria), all of mixed traditions, have been among the first in the region to undertake this kind of process. It is also to be realised that for these mixed legal systems, the passage of such comprehensive laws is a practical test of the status of customary and Islamic law in relation to CRC implementation. Table 2.1.1 below outlines these classifications by country.

Table 3.2.1: Outlining classification of statutes by country

<table>
<thead>
<tr>
<th>General frameworks leading to further legislation</th>
<th>Frameworks based on Child Protection</th>
<th>Frameworks based on civil, political, economic, social and cultural rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argentina, Azerbaijan, Estonia, Kyrgyzstan, Kazakhstan, Latvia, Lithuania, Maldives, Mexico, Russian Federation, Turkmenistan, Uzbekistan</td>
<td>Armenia, Albania, Belarus, Belize, Botswana, Bulgaria, Canada, China, Ghana, Haiti, Hungary, Ireland, Indonesia, Jamaica, Jersey, Jordan, Kenya, Latvia, Libya, Malaysia, Malawi, Mali, Mauritius, Namibia, Nepal, New Zealand, Pakistan, Palestine, Saskatchewan, Sierra Leone, Singapore, South Africa, Thailand, Togo, Tunisia, Uganda, United Kingdom and Yemen.</td>
<td>Belarus, Bolivia, Brazil, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Gambia, Guatemala, Honduras, Iceland, India (Goa), Indonesia, Lesotho, Myanmar, Nicaragua, Nigeria, Panama, Paraguay, Peru, Romania, Trinidad &amp; Tobago, Uruguay and Venezuela.</td>
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</tbody>
</table>

Without prejudice to advances made by some States in the application of their respective statutes, mention should be made of inherent advantages and disadvantages of each of these frameworks. Firstly, frameworks based on the general model can be regarded as a proactive way of providing enabling legislation in favour of children in the short term, with a view to enacting more specific laws in the medium to long term. Such laws serve to fill the gap while more detailed and specific laws are considered and enacted. General frameworks also provide a useful base for States to embark upon law reform within the ambit of the law provided. The disadvantage with it, however, lies in the potential delays that can emerge from the anticipated more specific law reform processes. Secondly, frameworks based on child protection are inherently limiting in so far as they concentrate on child protection issues to the neglect of others such as survival, development and participation. Nevertheless, such frameworks could lead the way towards making child protection issues more visible on both the legislative and national agenda, while charting the path for additional reforms in the future. Thirdly, it would be tempting to describe the more holistic frameworks as the most desirable since they cover more areas of CRC provisions and could be closer to the level of consolidation anticipated under General Comment 5. However, their depth may result in a prolonged period of legal analysis and promulgation due to the objective of harnessing as many provisions of the CRC as possible. The perceived notion that they constitute the law on children could also negate the essential character of law reform as a dynamic and responsive tool and deprive such States of opportunities to consider new law reform initiatives in line with Comment 5.

101 Section 1(2) of the law of Estonia states that “this Act provides the basis for further legislation of general application of the Republic of Estonia concerning child protection”.

102 The wording and structure of the Romania statute conforms to the CRC.
3.2.2 Other important considerations

Variations among States with federal forms of governments

There is no single approach to law reform. Argentina and Mexico, for example, have adopted general frameworks at federal level in the expectation of state-specific legislation. Meanwhile, the laws of Indonesia and the United Kingdom, though falling under the framework of child protection, are directly applicable across their respective constituents. Conversely, in, Nigeria, the law can only become applicable across the country upon its adoption by two-thirds of the states. These three situations are also different from systems in countries such as Canada and India, where states have the mandate to pass consolidated statutes in the absence of a federal law.

Consequential powers to make subsidiary legislation or regulations

In order to guide implementing agencies in their work, most statutes confer powers to specific agencies of State to make regulations in pursuance of thematic areas (example child labour, adoption and institutional care) specified under their respective laws.\(^{103}\)

3.2.3 Evidence of rights based approaches in the design of statutes

Being inspired by the CRC and other international norms, it is important to point out that a significant number of States have one or more dimensions of the rights based approach in the design of their statutes. The elements identified and discussed below cover 1) express references to international frameworks; 2) children as subjects of rights with capacity to claim their rights and 3) the identification of duty bearers for purposes of implementation of the law.

Express references in statutes to international frameworks\(^{104}\)

States which make express reference to the CRC as one of the primary objects of their laws include Belarus, Brazil, Goa, Haiti, Kyrgyzstan, Lesotho, Lithuania, Mexico, Myanmar, Sierra Leone, South Africa, Tunisia, Uganda and Uzbekistan. The statute of Indonesia also makes reference to CEDAW and the ILO Convention number 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor. Lithuania makes a rare reference to the 1959 UN Declaration on the Rights of the Child, while Azerbaijan and Kyrgyzstan affirm that international law will prevail in the event of conflict between the statute and its internal law obligations in line with its constitutional obligations.\(^{105}\) It is also significant that Ecuador has expressed the general human rights principles of universality, interdependence and indivisibility as guides to implementation of its law.\(^{106}\) Additional references to the ACRWC have also been made in the preambles to the Sierra Leone, Lesotho and Uganda statutes.

\(^{103}\) Examples of countries with provisions on such express responsibility include Estonia (a.68), Gambia (s.240 (1)), Ghana (s123), Haiti ( ), Ireland (s.47, part 4) Jersey (s.81), Lesotho (s.252), Malaysia (s.128) Mexico (a.1), Myanmar (s.74), Namibia (s.28), Nigeria (schedule 7), Singapore (s.88) and Uganda (s.110).

\(^{104}\) Refer to preambular sections of the laws identified.

\(^{105}\) Article 45.

\(^{106}\) See Articles 15 and 16.
These cases demonstrate commitments by governments to implement these instruments within their respective national settings. They can additionally be used as reference tools by judges and other advocates in seeking the enforcement of the rights of the child. Some of the ways in which express references have been made to international frameworks are set out in box below 2.1.2.

Box 3.2.3.1: Express references to treaty obligations by Goa, Lesotho and Sierra Leone

**Goa:**

The provisions of the Convention on the Rights of the Child as acceded to by the Government of India are hereby declared to be part of the law of the land and it shall be the duty and responsibility of the State Government to respect and ensure that the Rights of the Child as declared and enumerated in the Convention, are protected and guaranteed to every child within the territory of Goa. Government shall take adequate measures for the proper implementation of the rights of the child included in the Convention and to prevent any discrimination, exploitation or abuse of the child on any ground. The provisions on the Convention on the Rights of the Child are taken as the rights of the child in Goa and are legally enforceable, except where they pertain to the central government or to any other authority which is outside the purview of the state government provided that nothing in this section shall restrain the government from specifying higher standards for children.

**Lesotho:**

The objects of this Act are to extend, promote and protect the rights of children as defined in the 1989 United Nations Convention on the Rights of the Child, the 1990 African Charter on the Rights and Welfare of the Child and other instruments, protocols, standards and rules on the protection and welfare of children to which Lesotho is signatory.

**Sierra Leone:**

Whereas Sierra Leone is a signatory to- The Convention on the Rights of the Child, having signed it on the 12th February, 1990 and ratified it on the 18th of June, 1990; and the two Optional Protocols on the Convention, firstly, on The Sale of Children, Child Prostitution and Child Pornography having signed it on the 8th September 2000 and ratified it on the 17th September, 2001; and secondly, on the Involvement of Children in Armed Conflict, having signed it on the 8th September, 2000 and ratified it in May 2002; and the African Charter on the Rights and Welfare of the Child. **AND WHEREAS** the Convention and its two Protocols referred to above and the African Charter, having entered into force, it is now desirable that be implemented in Sierra Leone.

**South Africa:**

**AND WHEREAS** the United Nations has in the Universal Declaration of Human Rights proclaimed that children are entitled to special care and assistance; **AND WHEREAS** the need to extend particular care to the child has been stated in the Geneva Declaration on the Rights of the Child, in the United Nations Declaration on the Rights of the Child, in the Convention on the Rights of the Child and in the African Charter on the Rights and Welfare of the Child and recognised in the Universal Declaration of Human Rights and in the statutes and relevant instruments of specialised agencies and international organizations concerned with the welfare of child.

**Children as subjects of rights**

By placing statutory principles, provisions and obligations under the purview of the CRC and other international instruments (as the preceding and succeeding discussions will show), States are in principle, signalling a perception of the child as holder of rights. While this observation can be made with respect to a substantial number of the laws identified in this study, it is of significance that some demonstrate this in more explicit terms. Such an expression has been provided under the preambular portions of the statutes of Brazil, Ecuador, Haiti, Mali and Tunisia (among others). In its initial report to the Committee,
Brazil, for instance, expressed the new status accorded to the child under its statute in the following terms:

“The Statute of the Child and Adolescent inaugurated, within Brazilian juridical culture, a new paradigm inspired by the conception of the child and adolescent as true rights-bearers, in a special stage of development… In their capacity as rights-bearers in a special stage of development, the right to special protection is guaranteed to children and adolescents. From the human rights standpoint, the 1988 Constitution and the Statute of the Child and Adolescent expressed a comprehensive view of the human rights of children and adolescents, including the indivisibility of these rights, their reciprocal implementation and the equal importance of all the rights, whether civil, political, social, economic or cultural”107

To facilitate the enforcement and protection of the rights of children, a substantial number of States have made provisions for the creation of implementing structures and systems.

**Creation of adjudicative bodies**

The creation of structures of judicial administration with a view to securing access to justice by the child is an important institutional intervention. A shift is noticeable in emphasis from child utilization of general judicial structures towards the creation and utilization of specialised structures with a view to ensuring that undue delays resulting from competition between general cases and child-related cases are brought to a minimum. Some statutes have therefore given legal effect to the creation and operation of a range of adjudicative bodies to meet the specific requirements of their respective laws.

They include children’s courts,108 family courts/tribunals,109 juvenile courts110 and child protection courts.111 The New Zealand statute is explicit regarding the need to decentralise the availability of youth courts with a view to securing access to all children and youth.112 By way of enhancing the child-friendly nature of their courts, Gambia, Ghana, Ireland, Jamaica, Malaysia, Myanmar, Namibia, New Zealand and Uganda courts and tribunals are required to sit as often as may be necessary and in such place or places as may from time to be specified and in designated buildings for the purpose.

**Alternative Dispute Resolution Mechanisms**

Alternate Dispute Resolution procedures and structures are also emerging from some statutes. This is a significant development given the need to resolve child-related issues in ways which are expeditious, with a view to removing or reducing delays associated with formal processes. New Zealand, Saskatchewan and Tunisia, for instance, have legislated and developed such structures for mediation in family service hearings.113

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107 Paras. 21 & 22.
108 Example, Gambia (s.68), Goa (s.27) Ireland (s.71, part 7) Lesotho (s.137), Kenya (s.73), Malaysia (s.11), Namibia (s. 7(1) and South Africa (Chapter 4).
109 Example Ghana (s.33) New Zealand (s150), Nigeria (s.149), Sierra Leone (s.75), Tunisia (a.51) and Uganda (Part 4).
110 Example, Haiti (a.329), Jamaica (s.71), Mali (a.77), Myanmar (s.40), Singapore (Part 3) and Tunisia (a.75).
111 Example, Pakistan (s.71).
112 Section 433.
113 See sections 170, 10-12 and 113-115 respectively.
Lay forum hearings are also possible under the South Africa statute with a view to fostering out-of-court hearings and settlements. Under the same law, delays in court hearings cannot be contemplated unless for a good cause. In some instances judicial panels are composed of persons with appropriate personal and professional qualities of relevance to child welfare issues. In Namibia, for instance, the presiding officer of the Children’s Court is to be assisted by assessors who have experience in any matter which may arise for decision at the said enquiry or hearing. Similarly, under that of Tunisia, a juvenile court is to be assisted by specialists in the field of juvenile justice administration. In the Gambia and Malaysia, one of the panel members must be a woman and in all cases, proceedings are to be held in an informal atmosphere.

Box 3.2.3.2: Showing examples of provisions on child-friendly courts: Goa, Lesotho and Nigeria

Goa

In all aspects of functioning, the Children’s Court shall be guided at all times by the best interests of the child and all its procedures, the office, the dress worn by the members of the legal profession and all others shall be consciously and deliberately child friendly- Section 27 (2).

Lesotho

The court room, where practicable, should be located and designated in a way which is conducive to the dignity and protection of children and the proceedings shall be informal, child-friendly and allow the active participation of all persons who need to be involved in the proceedings- Section 137 (3).

Nigeria

(1) The personnel of the Court shall be afforded professional education, in-service training, refresher courses and other modes of instruction to promote and enhance the necessary professional competence they require. (2) The contents of the education, training and courses referred to in Sub section (1) of this section shall be such as reflect the diversity of the children who come into contact with and the diversity and complexity of matters dealt with by the court- Section 154.

Integral to justice administration is the guarantee of legal aid to the child while the appointment of court representatives is made possible in some jurisdictions. In a bid to ensure that indigent children are not denied access to justice, the Chief Justices of Ghana and Sierra Leone are additionally mandated under their respective laws to design legal instruments that would provide for full or partial waiver of filing fees.

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114 Section 49.
115 Section 64.
116 Section 7(3).
117 Article 76.
118 Sections 69 (b) and 11(3) respectively.
119 Gambia: Section 72.
120 Similar provisions exist for Myanmar. Section 42 (b).
121 Example Belarus (a.13), Brazil (a.111), Gambia (s.187), Ghana (s.48), Goa (s.32©), Haiti (a.58), Jamaica (S.4(3)(a)(b)), Kenya (s77), Jersey (s.75), Namibia (s4(3)), Nepal (s.19) New Zealand (s.159), Nigeria (s.155), Sierra Leone (s. 80(1)), South Africa 9s.55), Tunisia (a.9), and Uganda (s 16(e)).
122 Sections 61 and 103 respectively.
Box 3.2.3.3: case study of the provision of legal aid in Jamaica (Children’s Advocate)

The Children’s Advocate shall act as the child’s legal representative in the proceedings if the child so consents, directly or through his parent or guardian; if the Children’s Advocate has cause to believe that any of the fundamental rights and freedoms of the individual protected under Chapter III of the Constitution of Jamaica have been or being contravened in relation to any child, he may institute or carry on, on behalf of the child, any proceedings for redress under section 25 of the Constitution of Jamaica- (Section 4(3) (a) (b) of law of Jamaica).

First call on children

The statutes of Ecuador and Mexico impose an obligation on the State to give children and the youth the first call with respect to the delivery of services, suggesting that children should be given priority in such situations. While noting that in cases of conflict of interest, the rights of children and adolescents will prevail; the statute of Ecuador is also noted for giving special attention to children six years and below (early childhood).

Box 3.2.3.4: Legislative mandate to provide the First Call to Children by Mexico.

The priority of children and youth in exercising their rights, especially in respect of the following matters shall be ensured:

- Children and youth shall be afforded protection and help promptly and under any circumstance.
- Child and youth shall have priority over adults in all types of service, under conditions of equality.
- Design and implementation of the necessary public policies to protect the rights of children and youth shall be considered. The institutions in charge of protecting the rights of children and youth shall receive additional funds.- Article 14.

The identification of duty bearers for purposes of implementation of the law

Knowing the institutions and persons responsible for the implementation of the rights of the child is a central feature of the rights-based framework and has been expressed in some statutes as encompassing the State, community, family and the child. In explaining the role that its law was expected to play in the fulfilment of child rights, the Maldives, for example, made it very clear that “the law prescribes guiding principles for the Government, parents and community in order to ensure and enhance the rights of the child. The law was derived directly from the provisions stipulated in the CRC, providing a legal basis for the protection of children in the Maldives.” Similar expressions are provided in the laws of Brazil and Indonesia as box 2.1.6 indicates.

Box 3.2.3.5: Categories of duty bearers as provided by the laws of Brazil and Indonesia

Brazil:

It is the duty of the family, the community, the society in general and the government to ensure, as a matter of absolute priority, the effective implementation of the rights regarding life, health, nutrition, education, sports, leisure, profession, culture, dignity, respect, freedom, family and communal coexistence.—Article 4.

Indonesia:

The state, government, community, the family and parents shall all be responsible and accountable for protecting children.-Article 20.

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123 Article 12.
124 Article 14
125 This suggests that children are to be given absolute priority attention.
126 Article 12(b)-(c).
127 The Family, State and Society are clustered under the statutes of Mexico (art. 3(f)) Ecuador (art.8).
The following discussion provides deeper insights into how various duty bearers have been described in relation to children.

The State

Emerging from some country statutes is the inclusion of provisions for the creation of specific implementing institutions. These generally cover overall co-ordinating bodies, social welfare institutions and special panels and committees at different levels of governance.\(^\text{129}\) States which used the opportunity of the consolidated framework to include co-ordinating bodies with overall responsibility for implementation are set out in table 2.1.1 below.

**Table 3.2.3: Showing States which have integrated provisions on co-ordinating bodies**

<table>
<thead>
<tr>
<th>State party</th>
<th>Co-ordinating Structures/ Commissions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bulgaria</td>
<td>National Council on Child Protection(^\text{130})</td>
</tr>
<tr>
<td>Ecuador</td>
<td>National Council on Children and Adolescents(^\text{131})</td>
</tr>
<tr>
<td>Goa</td>
<td>State Commission for Children(^\text{132})</td>
</tr>
<tr>
<td>Indonesia</td>
<td>Commission for the Protection of Indonesian Children(^\text{133})</td>
</tr>
<tr>
<td>Kenya</td>
<td>National Council for Children’s Services</td>
</tr>
<tr>
<td>Sierra Leone</td>
<td>National Commission on Children(^\text{134})</td>
</tr>
<tr>
<td>Lesotho</td>
<td>Independent Children’s Commission(^\text{135})</td>
</tr>
<tr>
<td>Malaysia</td>
<td></td>
</tr>
<tr>
<td>Myanmar</td>
<td>National Committee on the Rights of the Child(^\text{136})</td>
</tr>
<tr>
<td>Pakistan</td>
<td>Pakistan Commission for the Protection of Children(^\text{137})</td>
</tr>
<tr>
<td>Nigeria</td>
<td>National Child Rights Implementation Committee(^\text{138})</td>
</tr>
<tr>
<td>Thailand</td>
<td>National Child Protection Committee(^\text{139})</td>
</tr>
<tr>
<td>Trinidad and Tobago</td>
<td>Children’s Authority of Trinidad and Tobago(^\text{140})</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>Children’s Commissioner(^\text{141})</td>
</tr>
</tbody>
</table>

An important feature of these institutions is their multisectoral composition and function which reflects the objects and purposes of the CRC. Membership of the National Council on Child Protection of Bulgaria, for instance, is to be comprised of “representatives of the Ministry of Labour and Social Policy, the Ministry of Justice, the Ministry of Education and Science, the Ministry of Health, the Ministry of the Interior, the Ministry of Finance, the Ministry of Culture, the Committee on youth, physical education and sports, as well as non-for-profit legal entities, whose purpose of activity is child protection.”\(^\text{141}\) Alternatively, the Latvian and Uzbekistan child laws set out the intersectoral linkages between various

\(^{129}\) It is important to establish that the absence of provisions for a co-ordinating body in other country laws is not an indication that provision has not been made under another regulatory framework.

\(^{130}\) Article 18.

\(^{131}\) Article 194.

\(^{132}\) Section 13(5). The law also sets up a Child Friendly Society for the purpose of among other functions, monitoring implementation of the CRC, dissemination of the CRC and the provision of disaggregated data on children. Section 13 (5) (a).

\(^{133}\) Chapter XI.

\(^{134}\) PART II.

\(^{135}\) PART XXVII.

\(^{136}\) Section 4.

\(^{137}\) PART II.

\(^{138}\) PART XXIII.

\(^{139}\) Section 7.

\(^{140}\) PART 1.

\(^{141}\) Article 18 (1).
executive, parliamentary and judicial agencies of State with a view to achieving effective, balanced and holistic implementation of the CRC. 142 This approach is commendable since it sets out the separate and interdependent roles of these agencies. The Latvian example has been presented as a model example in Appendix 4.

Similarly, membership of the Malaysian Council on Children also cuts across all departments responsible for implementing the rights of the child. 143 In some cases, such as Thailand, the statute empowers the co-ordinating agency in question to create a fund for implementation purposes. 144 Under these circumstances, a justification could be made for conducting a costing exercise with a view to ensuring that fund-raising efforts are informed by appropriate measurements. The Children’s Commissions of Lesotho and the United Kingdom hold independent status and are required to operate as independent children’s complaints mechanisms as generally advocated and recommended by the Committee. They both have the power to investigate national and individual cases of violations of child rights and to monitor compliance with international and regional obligations. Under section 2(11) of the statute of the United Kingdom, commissioners (of England, Scotland and Wales) are to have due regard to the provisions and principles of the CRC. A summary of the general functions of the Children’s Commissioner of the United Kingdom are set out in box 2.1.7 below:

**Box 3.2.3.6: On the general functions of the Children’s Commissioner of the United Kingdom.**

Promoting awareness of the views and interests of children. In doing so the Commissioner may:

- Encourage persons exercising functions or engaged in activities affecting children to take account of their views and interests;
- Advise the Secretary of State on the views and interests of children;
- Consider or research the operation of complaints procedures so far as relating to children;
- Consider or research any other matter relating to the interests of children;
- Publish a report on any matter considered or researched. In so doing, all reports of the Commissioner are to be published in child friendly versions including versions that would meet the requirements of a particular group of children to which the report relates.

The Commissioner is to be concerned in particular with the views and interests of children and must take reasonable steps to involve children in the discharge of his/her functions, ensure that they are made aware of the mandate of the Commission and how they can access it. In so doing, regard must be had to children who have limited means of making their views known. The Commissioner is to additionally consult children and organizations working with children in matters under consideration—Section 2(11).

In addition, the statute of the United Kingdom provides a framework of accountability by which the Secretary of State is required to lay before Parliament a consolidated and classified abstract of the information on the performance of local authorities with respect to residential accommodation of children. 145 This framework of regular review of performance has had the effect of placing child law reform efforts of the United Kingdom in a continuum and thereby substantially paved the way for the review of the Act of 1989 leading to the 2004 enactment.

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142 See Chapters X and Articles 54-63 respectively.
143 See section 4.
144 Chapter 8 on the Child Protection Fund.
145 See section 83(3)-(6).
In some jurisdictions, the responsibility for child protection lies with a specific social welfare institution (in the Gambia, Ghana, Pakistan and Romania, for example). As States are grappling with ways of raising the image of social welfare institutions, Belize has taken the novel step of designating its implementing agency as a human development institution with a strategic view to ensure that child protection issues are accorded significance within the mainstreaming of its human development agenda.

The political system of a State also serves as an important pointer of how statutes reflect State responsibility. To this extent, provisions generally complement either decentralised or federal systems of government. The statute of Ghana places the responsibility for child protection in the domain of the local authority: “A District Assembly shall protect the welfare and promote the rights of children within its areas of authority and shall ensure that within the district, governmental agencies liaise with each other in matters concerning children.”

The provisions of Ecuador serve as a model for appreciating the importance of integrated service delivery. Under its statute, all agencies are required to work together at all levels of planning, resource allocation, implementation and evaluation while ensuring that child and adolescent protection services are delivered in an integrated manner. In tune with measures of integration, the statutes of South Africa and Turkmenistan also lay explicit emphasis on the additional obligation of resource allocation as indicated in box 2.1.8 below.

Box 3.2.3.7: South Africa and Turkmenistan’s expression of State Responsibility in terms of the CRC implementation

<table>
<thead>
<tr>
<th>South Africa:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Implementation of Act</strong></td>
</tr>
<tr>
<td>4(1) This Act must be implemented by organs of state in the national, provincial and where applicable, local spheres of government subject to any specific section of this Act and regulations allocating roles and responsibilities, in an integrated, co-ordinated and uniform manner. (2) Recognising that competing social and economic needs exist, organs of state in the national, provincial and where applicable, local spheres of government must, in the implementation of this Act, take reasonable measures to the maximum extent of their available resources to achieve the realisation of the objects of this Act.</td>
</tr>
<tr>
<td><strong>Inter-sectoral implementation of Act</strong></td>
</tr>
<tr>
<td>5. To achieve the implementation of this Act in the manner referred to in section 4, all organs of state in the national, provincial and where applicable, local spheres of government involved with the care, protection and well-being of children must co-operate in the development of a uniform approach aimed at co-ordinating and integrating the services delivered to children.</td>
</tr>
</tbody>
</table>

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146 Section 66.
147 Section 16(2).
148 Article 7.
149 Section 2. However, the Belize example must be studied further. It is known to the author that agencies under the designation “Social Welfare” tend to be perceived as recipients of charity in view of the word “welfare.” It is being argued here that Belize has ingeniously avoided the use of this word as a way of enhancing the image and status of its institution. “Human” as opposed to “welfare” tends to circumvent the traditional notion of such institutions.
150 Section 16(1).
151 See article 190.
In other States, specific bodies or persons have been designated to carry out functions at the local level. In Nepal, central and district welfare boards are established with a view to monitoring the wellbeing of children in a given area. The boards are composed of social workers, medical practitioners, psychologists and teachers, while in Pakistan, child protection bureaus are to be set up in all districts with the express mandate to offer “technical, financial and other forms of assistance to the provincial government in order to safeguard the rights of children.” The same statute also provides for the appointment of child protection officers for “monitoring the status of a child in respect of whom an order of custody and community work has been made by the court.”

Similarly, New Zealand’s Care and Protection Co-ordinators and Youth Justice Co-ordinators are to be appointed with a view to monitoring and taking action on the wellbeing of children in contact and in conflict with the law. Mali and Tunisia have identical provisions for the appointment of child protection representatives across specified geographical areas with the objective of protecting the wellbeing of children through both preventive and protective interventions. To indicate the seriousness of the work of these officers, the two laws require taking an oath of office, which signals their responsibility and accountability towards children. The law of Uganda equally places the duty of safeguarding and promoting the welfare of children on local councils from the village to the district level.

An important object behind the amendment to the 1989 Children Act of the United Kingdom lay in the need to improve and clarify arrangements for local agencies with a view to ensuring effective co-ordination and implementation. The 2004 statute identifies the Children’s Services Authority as the central agency around which other local agencies - such as the district council, the police authority (including the chief officer of police for a police area), a local probation board, a youth offending team, a strategic health authority and primary care trust, a learning and skills provider and the learning and skills council - constitute the key partners around which collaboration, co-ordination and partnerships must revolve. At district levels, Local Safeguarding Children Boards are to be established with a view to protecting the interests of children at community level.

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152 Chapter 4.
153 Section 58.
154 Section 70.
155 Sections 424 and 425 respectively.
156 See Chapter 2 and Articles 29-50 respectively.
157 See Chapter 2 and Articles 29-50 respectively.
159 See section 10.
160 Section 14.
Within the context of a federal system of government, the statute of Mexico places a direct obligation on authorities or agencies of the Federation, Mexico City, states and municipalities “to ensure the protection and full exercise of the rights of children and youth and the necessary measures for their welfare in their own jurisdiction”. At the same time, the federal government places upon itself the duty of co-ordinating the activities of these levels of governments with a view to ensuring that they work together in a manner that would result in the “diligent management, protection and defence of the rights of children and youth”.

The Community

Legislative expressions of the community as a duty bearer may be found in the statutes of several States, generally placing an obligation on individual community members to draw the attention of relevant bodies to actual and suspected cases of child abuse and in some cases, failure to do so could result in a criminal conviction.

To encourage community action, some laws provide protection to informants. Under the law of Thailand, for instance, “persons notifying or reporting in good faith...shall receive appropriate protection and shall not be liable for any civil, criminal or administrative action”. Similar provisions exist under the law of Tunisia and New Zealand.

Box 3.2.3.8: Examples of provisions on community responsibility. Case studies from Belize, New Zealand, Myanmar and Uganda.

**Belize:**
Any member of the community who has evidence that a child’s rights are being infringed, or that a parent, guardian or any person having custody of a child is able, but refuses or neglects, to provide the child with adequate food, shelter, clothing, medical care or education, has a moral obligation to report the matter to the Department or the Family Court or magistrates court.-Section 47

**New Zealand:**
Any person who believes that any child or young person has been, or is likely to be, harmed (whether physically, emotionally, or sexually), ill-treated, abused, neglected, or deprived may report the matter to a Social Worker or a member of the police.-Section 15.

**Myanmar:**
Persons having responsibility in respect of the affairs of children shall have as their objective the best interests of children under the principles “First Call for Children” regarding protection and care of every child by the community.-Section 27.

**Uganda:**
Any member of the community who has evidence that a child’s rights are being infringed or that a parent, a guardian or any person having custody of a child is able but refuses or neglects to provide the child with adequate food, shelter, clothing, medical care or education shall report the matter to the local government council of the area.-Section 11(1).

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161 Article 7.
162 Article 50.
163 Example, Belize (s.47), Bulgaria (a.7(1)), Estonia (s.59), Gambia (s ), Ghana(s17), Haiti (a.36), Jamaica(s.6), Jersey (s.37), Malaysia (s ), Maldives (Chapter 3), Myanmar (s.27), New Zealand (s.15), Romania (a. ), Sierra Leone (s ), Singapore (s.87), Thailand (s.29), Tunisia (aa. 32-34) and Uganda (s.11).
164 Example, see s. 36 of the Lesotho statute.
165 Section 29.
166 Articles 33-34.
167 Section 16.
In some countries, specific *community-based structures* are provided for the protection of the wellbeing of children. Important characteristics of these structures include their identification with traditional authority, the participation of children and in some cases, the obligation to ensure gender balance in the community-based structure’s membership. Box 2.1.10 sets out how these have been provided for in Goa, Iceland, Malaysia, Sierra Leone and Uganda.

**Box 3.2.3.9: Showing examples of community welfare arrangements for children, using case studies from Goa, Iceland, Malaysia, Sierra Leone and Uganda**

**Goa:** Village Child Committees are provided for to see to the well being of children within a specified area. One important function is the provision of recreational facilities in the area. They are to be comprised of five persons, one of whom is to be a child above the age of 15 years and two of whom shall be female social workers.

**Iceland:** Child Protection Committees are to be set up at the Municipal level. A population of every 1,500 is entitled to one Committee. They are to be comprised of both men and women and members are to be “known probity”, and have a good understanding of matters of child protection. The function of each Committee is to monitor and respond to cases of child protection within their respective areas of operation.

**Malaysia:** Child Protection Teams have been created under the law for the purpose of co-ordinating locally-based services to families and children if children are suspected for being in need of protection. Membership includes a medical officer and senior police officer.

**Sierra Leone:** The statute of the country gives basic expression to the role of the community. Under section 36 of the law, (1) a head of village has a duty to receive and have discussed in *Bare* (defined as a traditional forum or gathering presided over by a traditional or community leader, open to all members of the community, including children but does not include a court (see section 2 on interpretation) or similar gatherings matters that may be affecting or may affect the common welfare of children in the community. (2) Any person, including a child, concerned about the welfare if children or any child in the community may communicate his concern to a village child welfare committee. (3) Any head of a community shall refer to a village child welfare committee any matter concerning child welfare that is complex or which the community fails to resolve.

The law of Sierra Leone also makes provision for the creation of village welfare committees and chiefdom welfare committees. These are to be composed of social workers, traditional leader, a parent, a female child or young person, a male child or young person, service providers and civil society. Their object of the village welfare committee is to *advance the enjoyment of the rights of the child at the village level*, while that of the chiefdom welfare committee is to *coordinate and advance the enjoyment of the rights of the child in the chiefdom*. Some of their functions include child rights awareness, monitoring of girl child education, prevention of violence, overseeing minor criminal and civil matters affecting children and counselling on the rights of the child (see sections 47-49 of the law).

**Uganda:** Section 92 of the law of Uganda provides for village executive committees with the mandate to determine issues of a criminal and civil nature involving children.

**Parents**

Parental duties and responsibilities are expressed in a substantial number of statutes in support of other provisions which relate to the right of the child to know and be cared for by his or her parents, the right to live in a family environment, as well as the right to be

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168 Ghana, Goa, Malaysia, Sierra Leone and Uganda, for example.

169 *Section 13*(8).

170 Sections 10-12.

171 *Section 7*(2).
maintained. In line with the CRC, most of the States identified give expression to parental responsibility to maintain the child in terms of a common duty between both parents. As such, parental responsibility does not cease when parents are divorced or separated or even when a child has been committed to an institution or fit person.

Box 3.2.3.10: Provisions on joint parental duties and responsibilities, a case study from Sierra Leone.

| (1) | No parent shall deprive a child of his welfare Whether- (a) the parents of the child are married or not at the time of the child’s birth; or (b) the parents of the child continue to live together or not. |
| (2) | Every child has the right to life, dignity, respect, leisure, liberty, health, including immunization against diseases, education and shelter from parents. |
| (3) | Except where the parent has surrendered his rights and responsibilities in accordance with law, every parent has rights and responsibilities whether imposed by law or otherwise towards his child which include the duty to- (a) protect the child from neglect, discrimination, violence, abuse, exposure to physical and moral hazards and oppression; (b) provide good guidance, care, assistance and maintenance for the child and assurance of the child’s survival and development; (c) ensure that in the temporary absence of a parent, the child shall be cared for by a competent person and that a child under eighteen months of age shall only be cared for by a person of fifteen and above. |
| (4) | Every parent shall be responsible for the registration of the birth of their child and the names of both parents shall appear on the birth certificate except when the father of the child is unknown to the mother—Section 25 173 |

A parent bearing a disproportionate burden in his care of his child due to the neglect of parental duties by a co-parent may apply for financial or other relief—Section 35 (4)

However, some countries have made distinctions based on the marital status of the parents of the child. For instance, under section 3(2) of the law of Jersey and 2(2) (a) of the United Kingdom, the mother of the child is to have parental responsibility for the child where no marriage has taken place with the father of the child at the time of birth.174 Parental authority to a father under such circumstances can only be granted upon a formal application being made.175 Based on the contents of the law, it becomes clear that these provisions were made in response to an earlier legal position which placed parental responsibility in the hands of a male parent. This is seen from the following:

Box 3.2.3.11: Provisions of Jersey of abolishing male parental responsibility for children 176

| (3) | The rules of law that – (a) where a child is legitimate, the child’s father has sole custody of the child; and (b) where a child is illegitimate and the child’s mother marries, her husband (whether or not he is the father) has sole custody of the child, are abolished. |

However well-intentioned this provision is in relation to women, it still brings into sharp focus the provisions on non-discrimination as set out under UNDHR and CEDAW. In as much as it grants parental rights to women automatically, the discrepancy resulting from the additional requirement for a father to apply formally may not meet the equality and non-discrimination criteria of these instruments.

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172 Example, see Azerbaijan (a.19), Belarus (a.15), Brazil (Chapter 2), Ecuador (a.100), Ghana (s.6), Haiti (Section II of Chapter I and articles 116-122), Kenya (s.23), Iceland (a.1), Lithuania (a. 21) Romania (a.30), Sierra Leone (s.25), Thailand (s.25), Uganda (s.4), and Uzbekistan (a.26)

173 The same provisions are found in the Ghana statute.

174 Although it is to be noted that under section 4(1)(a) of the law, it does not negate the responsibility of the father to contribute towards maintenance of the child.

175 Under section 5(1)(a).

176 See section 2(2)(4) for a similar provisions in the statute of the United Kingdom.
The Child

There is now a growing tendency among States to regard children as duty bearers. This is to be regarded as a significant shift within State jurisprudence, given that the CRC does not contain any provisions in relation to the duties and responsibilities of the child. The provisions of the Gambia, Lesotho, Mali and Nigeria reflect the provisions of the ACRWC. While provisions of some statutes may be more elaborate than others, they generally encompass the broad areas of respect to parents, guardians, superiors and elders, service to the community and service to the nation. Box 2.1.13 outlines how this trend is reflected in the statute of Trinidad and Tobago. The number of States with such provisions is significant enough to demonstrate their importance in the view of States.

Box 3.2.3.12: Statute Trinidad and Tobago on the duties and responsibilities of children

Trinidad and Tobago

Every person under the age of 18 in Trinidad and Tobago, having the special protection under the law granted to a child, has responsibilities under the law which shall be observed subject to their age and understanding including but not limited to:

1. respect and to obey the law;
2. not to take or to harm the property of other people without that person’s permission;
3. learning about human rights and to respect the rights of others;
4. respecting the guidance of parents, except where the law says otherwise;
5. attending school until the age of twelve;
6. learning about and respect one’s culture, language and country;
7. expressing one’s views about matters which affect oneself;
8. respecting the environment;
9. respecting one’s own religious beliefs and the religious beliefs of others.

Second Schedule (Part D) to Act No. 68 of 2000.

3.3 Definition of the child (Article 1)

In line with Article 1 of the CRC, most statutes define a child as any person below the age of 18 years. Some countries, however, apply lower ages. For instance Myanmar and Nepal have an age limit of 16 years, while Singapore has fixed it at 14 years.

Variations also exist in relation to how States determine the attainment of age of majority or the classification of a child and young person. For instance, the interpretation section of the Children’s Act of Sierra Leone, includes a clause on Young Persons which is defined as a person between the ages of 18 and 25 years. On the other hand, the statute of Myanmar defines youth to mean a person between 16 and 18 years of age. Latin American countries generally define child to mean every person below the age of 12 years and adolescent as

177 Countries with provisions on the duties and responsibilities of the child include, Azerbaijan (a.16), Belarus (a.14), Ecuador (a.64), Estonia (ss18-20 and 23), Gambia (s.23), Indonesia (a.19), Jamaica (ss.44-45), Kazakhstan (a.20), Kenya (s.21), Latvia (Chapter 4), Lesotho (s.21), Lithuania (Chapter 8), Mali (aa. 21, 102-103), Mexico (a.9), Myanmar (s.30), Nigeria (s.19), South Africa (s.16), Trinidad and Tobago (Second Schedule (Part D) to Act No. 68 of 2000), Turkmenistan (a.35) and Uzbekistan (a.10). However, depending upon its interpretation, the notion of duties and responsibilities may run counter to the rights based approach, especially where it is contingent on the implementation of rights.

178 Article 21.

179 Section 2(a).

180 Section 2(a).

181 Section 2.

182 Section 2(b).
every human being below the age of 18 and older than 12 (Brazil, Ecuador and Mexico for example). New Zealand defines a child to mean a boy or girl below the age of 14 years and a young person as a boy or girl of or over the age of 14 years but below 17 years, but automatically excludes a person of this age range who is or has been married. The code of Brazil provides an exception which states that in special cases within the law, this law shall be extended to persons between eighteen and twenty years.

Other comparisons from the perspectives of Saskatchewan, Indonesia, Latvia, Maldives and Thailand are set out in box 2.2.1 below:

**Box 3.3.1: Definition of child from the perspectives of Saskatchewan, Indonesia, Latvia, Maldives and Thailand**

<table>
<thead>
<tr>
<th>Country</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Canada (Saskatchewan)</td>
<td>“child” means a person who: is under 18 years of age; and has never married—Section 2(2).</td>
</tr>
<tr>
<td>Indonesia</td>
<td>A &quot;Child&quot; shall mean a person below eighteen (18) years of age, including the unborn—Article 1(1).</td>
</tr>
<tr>
<td>Latvia</td>
<td>A person who has not attained 18 years of age, excepting such persons for whom according to law, majority takes effect earlier, that is, persons, who have been declared to be of the age of majority or have entered into marriage before attaining 18 years of age—Section 3(1).</td>
</tr>
<tr>
<td>Maldives</td>
<td>“Children” means persons under the age of 16 years according to the Gregorian calendar and shall include human embryos and foetuses—Section 28(a).</td>
</tr>
<tr>
<td>Thailand</td>
<td>“Child” means a person below 18 years of age, but does not include those who have attained majority through marriage—Section 4.</td>
</tr>
</tbody>
</table>

The law of Haiti also makes it possible for a child who is above 16 years to be emancipated either through marriage or by a court order. By virtue of article 243, “emancipation shall terminate parental responsibility and Guardianship. The emancipated child shall enjoy legal capacity to carry out all civil and commercial activities of law.”

Despite variations in definition of child as contained in the CRC, there are no reservations entered among any of these States in relation to Article 1 of the Convention. There is, however, evidence that in 1997 the Committee had the opportunity to comment on disparities existing between domestic legislation and the CRC with respect to age in the case of New Zealand and accordingly recommended corrective action.

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183 Article 2.
184 In all cases see definition sections.
185 Section 2(1). Under the law of New Zealand, the objects indicate that the provisions are based on the cultural values and beliefs of all groups including ethnic minorities. It is therefore reasonable to suggest that the definition of child was based on national consensus. Nevertheless, the provision implies that child marriage is permissible and converts the status of such a child into that of an adult.
186 See article 2.
187 According to the Second and Third Periodic Report of Maldives however, this has been amended to 18 years. See Maldives. 10/04/2006.CRC/C/MDV/3. Para. 27.
188 This is however to be read in tandem with article 2, which defines child as any person below the age of 18 years.
189 With the exception of Argentina, which sought to reaffirm its own definition of child. See http://www.unhchr.ch/tbs/doc.nsf/statusfrset. Argentina.
190 See CO: New Zealand. 24/01/97.CRC/C/15/Add.71. Paras. 10 & 23.
Specific definitions of the child for other purposes

Depending on the object and scope, some statutes also have express age limits with respect to employment, criminal responsibility, marriage and recruitment into the armed forces. The details are provided as follows:

- **Provisions on the minimum age of employment**

Variations exist with respect to the minimum age of employment. For instance, in the case of Trinidad and Tobago this has been set at 12 years; Brazil, Goa and Nepal have it set at 14 years; Ghana, Haiti, Jamaica, Kazakhstan, Lesotho, Mali, and Sierra Leone at 15 years, taking into account the same age set for the completion of basic education, while Belarus, Ecuador, Lithuania, Turkmenistan and Uzbekistan have set theirs at 16 years.

Different minimum ages for involvement of children in apprenticeship programmes include 12 years in the Gambia; 15 years in Ghana, Haiti, and Sierra Leone and 16 years in Uzbekistan. Under the law of the latter, a child below this age may be employed with the written permission of a parent or legal guardian. To prepare young people for work, the statute also permits the employment of students of secondary, vocational schools and secondary specialized educational institutions for exposure to work experiences which are not harmful to their survival and development. The State is thereby required to guarantee labour rights of a child by creating an enabling environment needed for combining work with education, and taking other measures stipulated by law (see article 17 of the Uzbekistan law and similar provisions under article 16 of the law of Kazakhstan).

Minimum ages have also been fixed in relation to light work, e.g. 13 years in Ghana, Lesotho, and Sierra Leone and 15 years in Jamaica. Night work is prohibited in these countries, although the definition varies (see below a discussion on child labour provisions). In Jamaica, it covers children below the age of 16 years. Countries with elaborate child labour provisions also place 18 years as the cut off point for hazardous employment (the Gambia, Ghana, and Sierra Leone, for example.).

---

191 Section 9 of Second Schedule to Act No. 68 of 2000.
192 Sections 60, 2 and 17(1) respectively.
193 Section 89.
194 Article 94.
195 Sections 33-34
196 Article 18(3).
197 Section 235.
198 Article 20(b).
199 Section 124.
200 Completion of “general education” is also the cut off point for Estonia (Section 43).
201 Article 65.
202 Articles 24, 39(3) 19 and 17 respectively. Parental consent is required where the child is below this age in some instances.
203 Article 111.
204 Section 90.
205 Section 236(1).
206 Section 33(3)(a).
207 Section 34 (b).
208 Section 127(1).

51
Minimum age of criminal responsibility

Wide variations exist with respect to the age at which a child can be held responsible for committing a crime. Goa, Ireland, Mali, Myanmar, Singapore and Tunisia have two-tier systems in place by which a minimum age is set and another age category is exonerated from criminal responsibility based on capacity to appreciate the consequences of their actions. Therefore in Goa and Myanmar, separate measures are adopted for children aged seven years and below and those up to 12 years.\(^{209}\) In Singapore, different measures are adopted for those between 7-16 years,\(^{210}\) In Mali this ranges from 13 to 18 years,\(^{211}\) in Tunisia from 13-15\(^{212}\) years and in Ireland from 12-14 years.\(^{213}\) Nepal, however, has a three-tier system, by which different measures are taken with respect to children below the age of 10, those between 10-14 and those between 14-16 years.\(^{214}\)

Table 3.3.1 provides an overview of the present situation and as a demonstration the provisions of Ireland are presented in box 3.3.2.

### Table 3.3: Showing how States have set and applied the minimum age of criminal responsibility

<table>
<thead>
<tr>
<th>State</th>
<th>Minimum age</th>
<th>Presumption 2</th>
<th>Presumption 3</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>One-tier States</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lesotho</td>
<td>10</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Brazil</td>
<td>12</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gambia</td>
<td>12</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Haiti</td>
<td>12</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jamaica</td>
<td>12</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Uganda</td>
<td>12</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tunisia</td>
<td>13</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Latvia</td>
<td>14</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sierra Leone</td>
<td>14</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Pakistan</td>
<td>15</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Lithuania</td>
<td>16</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Two-tier States</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Goa,</td>
<td>7</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Myanmar</td>
<td>7</td>
<td>12</td>
<td></td>
</tr>
<tr>
<td>Ireland</td>
<td>12</td>
<td>14</td>
<td></td>
</tr>
<tr>
<td>Mali</td>
<td>13</td>
<td>18</td>
<td></td>
</tr>
<tr>
<td>Singapore</td>
<td>7</td>
<td>16</td>
<td></td>
</tr>
<tr>
<td>Tunisia</td>
<td>13</td>
<td>15</td>
<td></td>
</tr>
<tr>
<td><strong>Three-tier States</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nepal</td>
<td>10</td>
<td>14</td>
<td>16</td>
</tr>
</tbody>
</table>

Box 3.3.2: provisions on Ireland on the age of criminal responsibility.

52 (1) It shall be conclusively presumed that no child under the age of 12 years is capable of committing an offence.

(2) There is a rebuttable presumption that a child who is not less than 12 but under 14 years of age is incapable of committing an offence because the child did not have the capacity to know that the act or omission concerned was wrong.

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209 Sections 32 (a) and 28 respectively.
210 Section 2.
211 Article 98.
212 Article 68.
213 Section 52 of PART 5.
214 Section 11.
• Minimum age of recruitment into the armed forces

In terms of a minimum age of recruitment into the armed forces, States generally evoke the provisions of the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict. With the exception of Azerbaijan which has an age limit of 15 years, all countries have set the age limit at 18 in line with the Protocol.215

There is, however, supporting evidence to show discrepancies between some countries’ legislations and declarations which these countries have entered into with respect to the Protocol. Typical cases are the Declarations entered into by Azerbaijan and Mexico, the contents of which tend to differ from their respective legislation. In the case of the former, the declaration sets the age limit at 17, compared to 15 years in its statute, whereas in the latter, persons below 18 can be recruited in some cases. Relevant parts of these two Declarations are presented in box 2.2.4 below:

Box: 3.3.3: Declarations to the Optional Protocol by Azerbaijan and Mexico and apparent variations with legislation.

| Azerbaijan | Pursuant to Article 3 of the protocol, the Republic of Azerbaijan declares that in accordance with the Law of the Republic of Azerbaijan on the military service of 3 November 1992, the citizens of the Republic of Azerbaijan and other persons, who are meeting the defined requirements of the military service, may voluntarily enter and be admitted in age of 17 the active military service of the cadets military school. The legislation of the Republic of Azerbaijan guarantees that this service shall not be forced or coerced, shall be realized on the basis of deliberative consent of the parents and the legal representatives of those persons, that those persons shall be provided with the full information of the duties regarding this service, and that the documents certifying their age shall be required before the admission to the service in the national armed forces216. |
| Mexico | In ratifying the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, adopted by the General Assembly of the United Nations on 25 May 2000, the Government of the United Mexican States considers that any responsibility deriving therefrom for non-governmental armed groups for the recruitment of children under 18 years or their use in hostilities lies solely with such groups and shall not be applicable to the Mexican State as such. The latter shall have a duty to apply at all times the principles governing international humanitarian law217. |

(Different country measures with respect to this subject are discussed in more detail under the sub-heading on children in emergency situations).

• Other forms of consent

Other forms of consent have been expressed in country statutes. They include the age of consent to sexual intercourse (18 years in Nigeria218); age of consent for taking blood samples (16 years in the Gambia219); consent to medical treatment are fixed at 12 years in South Africa220 and 14 years in Uzbekistan221 and the age of consent for conducting HIV/AIDS testing, (12 years in South Africa).222

215 Example, see Belarus (a.33), Gambia (s.38), Haiti (a.38), Nigeria (s.34(1)), and Uzbekistan (a.45).
216 See UN treaty database, Reservations and Declarations (2007).
217 Ibid.
218 Section 31.
219 Section 139 (2) for purposes of establishing parentage.
220 Section 129.
221 Article 24.
222 Section 130.
3.4 General Principles (Articles 2, 3, 6 and 12)

The general principles of the CRC also vary in terms of both content and scope. Indonesia and Sierra Leone serve as examples of States with all four principles of the Convention expressed in their statutes. The former contains a special section on “principles and objectives” under which all four principles of the CRC are expressed as stated in box 3.3.3 below:

Box 3.4.1: Expression of the principles of the CRC in the statute of Indonesia

<table>
<thead>
<tr>
<th>The protection of children shall be based upon Pancasila (the national ideology), the 1945 Constitution and the basic principles contained in the Convention on the Rights of the Child, including the following:</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Non-discrimination;</td>
</tr>
<tr>
<td>b. The best interests of the child;</td>
</tr>
<tr>
<td>c. The right to life, continuity of life and to develop;</td>
</tr>
<tr>
<td>d. Respect for the opinions of children (article 2).</td>
</tr>
</tbody>
</table>

The statute of New Zealand, however, includes other principles such as the importance of obtaining the views of the family of the child and the need to sustain and strengthen the relationship between the child and his or her family, while that of the United Kingdom includes the essential element of the avoidance of delays in the determination of cases as a key principle in child protection interventions. Therefore, section 1(2) of its law states that “in any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child”.

Non-discrimination

Under the principle of non-discrimination, States have generally designed provisions in response to the internal situation of their respective countries. A special case in point is Goa, which has expressly provided for non-discrimination of marginalized segments of society including the Scheduled Castes and Scheduled Tribes. Similar provisions can be found with respect to ethnic minorities under the provisions of Ecuador, and refugees in the case of Ghana.

The most visible development within the area of the prohibition of discrimination has been in the removal of distinctions between children born under different marital circumstances of their parents. The statutes of Azerbaijan, Belarus, Kazakhstan, Namibia, Nepal, and South Africa, prohibit discrimination against children born out of wedlock,
voidable marriages or alternative reproductive techniques.\textsuperscript{234} The provisions of Estonia state that the child has an equal right to receive assistance and care and to develop, regardless of his or her sex or ethnic origin, regardless of whether the child lives in a two-parents family or single-parent family, whether the child is adopted or under curatorship, whether the child is born in wedlock or out of wedlock, or whether the child is healthy, ill or disabled.\textsuperscript{235} Equally, under the law of Saskatchewan, a person’s status as a child of his or her parents is independent of whether he or she is born inside or outside marriage and all distinctions between the status of a child born inside marriage and a child born outside marriage are abolished.\textsuperscript{236}

The non-discrimination sections of the statutes of Haiti and Nepal serve as models because they are both sensitive to the provisions of the CRC, CEDAW and the UDHR. The Haitian provisions express the principle of non-discrimination in terms of equality before the law, and include \textit{discriminatory attitudes and practices} as part of its definition. It also significantly provides recourse to justice by the child in cases where these provisions have been violated. The provisions of Nepal are also to be noted for their specific target at male and female children, children born in and out of wedlock and adopted and natural children.

\textbf{Box 3.4.2: Provisions of Haiti and Nepal on non-discrimination, taking account of the CRC, CEDAW and the UDHR.}

\textbf{Haiti:}

\textbf{Article 17} – All children are equal before the law, and have the right without any discrimination to exercise these rights recognized by this code, the convention on the rights of the child and other international instruments ratified by the Republic of Haiti.

\textbf{Article 18} – In accordance with this code, discrimination covers behaviours, attitudes, actions, deeds which tend to deprive a child of the enjoyment of certain rights and privileges on account of his/her race, colour, language, sex extent of wealth, culture, national or social origins, his belonging to a religion or political groups, affiliation, sickness, physical or mental illness.

\textbf{Article 19} – Any discrimination against the child constitutes an infringement of his/her rights. Any child who is victim of a discriminatory act has a right to be heard either before the chairman of a Juvenal Court or before a justice of the peace near him/her, to penalize the act, without prejudice to any other action in monetary reparation.

\textbf{Nepal:}

\textbf{Section 5} - No discrimination shall be made between a son and daughter and between sons and daughters themselves in matters relating to their upbringing, education and health care.

\textbf{Section 6} - No discrimination shall be made between children born out of wedlock or in lawful wedlock in matters of their upbringing, education or health care. No discrimination of any kind shall be made between the natural or adopted son or daughter.

To facilitate the implementation of this right the Committee has consistently recommended regular \textit{data collection} to assist in monitoring and to provide an informed basis for specific decisions related to different groups of children. While the study did not come across provisions on broad measures of statistical data gathering, there was ample evidence across

\textsuperscript{234} Parts 4 and 6-7 respectively.

\textsuperscript{235} Section 10.

\textsuperscript{236} Section 40.
many statutes of the legal requirement to keep records of children in special circumstances up to date. Specific instances may be cited as follows:

- **Children’s registers** are to be kept with a view to documenting reports of child abuse in the case of Jamaica.
- **Adoption registers** are also to be kept with respect to Gambia,\(^{237}\) Ghana,\(^{238}\) Nigeria,\(^{239}\) South Africa,\(^{240}\) and Uganda.\(^{241}\)
- **Registers of children in need of special protection** are also to be created in Romania,\(^{242}\) Malaysia,\(^{243}\) and South Africa.\(^{244}\)
- **Registers of child minders** are to be created in Nigeria.\(^{245}\)
- **Registers of disabled children** in Belize\(^{246}\) and Uganda\(^{247}\) and
- **Registers of working children** in Ecuador.\(^{248}\)

A model example of vital registration is, however, expressed in the statute of Lesotho, in which mandatory provisions are made with respect to *orphaned and vulnerable children*.

**Box 3.4.3: Model provisions on documenting the situation of children. The example of Lesotho**

<table>
<thead>
<tr>
<th>Orphaned and vulnerable children shall have the right to vital registration.</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Department responsible for births and deaths registration shall maintain and administer a systematic and</td>
</tr>
<tr>
<td>comprehensive desegregated, quantitative and qualitative data in relation to all groups of orphaned and</td>
</tr>
<tr>
<td>vulnerable children. The Bureau of Statistics shall put in place mechanisms and strategies for the collection,</td>
</tr>
<tr>
<td>analysis and dissemination of data in respect of orphaned and vulnerable children—Section 8.</td>
</tr>
</tbody>
</table>

Additionally, under section 52 of the law of Nepal, the police department is specifically required to maintain *records of juveniles* based on name, address, age, sex, family background, economic conditions and offence committed.

The provisions of Mali\(^{249}\) permit *affirmative action* measures to reduce the effects of *past discrimination*. Mexico\(^{250}\) has further adopted certain provisions of CEDAW to endorse affirmative action as a special measure to protect vulnerable children and youth. Within the same context, steps are to being taken to *eradicate prejudices and established stereotypes which hinder the development of each of the sexes*.

**Box 3.4.4: How Mexico applies CEDAW to eliminate discrimination**

| The measures taken and the laws enacted to protect boys, girls and adolescents living in particularly difficult    |
| conditions for lack or deprivation of their rights and to secure the equal exercise of their rights shall not      |
| discriminate other children and youth or restrict the equal enjoyment of such rights. The special measures taken    |
| to favour the former but to respect the latter shall not be considered as discriminatory—Article 17.              |

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\(^{237}\) Section 118 (1).

\(^{238}\) Section 82.

\(^{239}\) Section 142.

\(^{240}\) Section 247.

\(^{241}\) Section 54.

\(^{242}\) Section 66 (5).

\(^{243}\) Section 118.

\(^{244}\) Section 111.

\(^{245}\) Section 163.

\(^{246}\) Section 46(2).

\(^{247}\) Section 10(5).

\(^{248}\) Article 85.

\(^{249}\) Chapter 2.

\(^{250}\) See article 17.
The authorities, parents, relatives in ascending line, legal guardians, and members of society shall promote and encourage the same development for boys, girls and adolescents; fighting or eradicating at the earliest ages the prejudices and established practices that generate the presumption of superiority of one sex over the other.

Article 18.

3.5 The principles of the Convention

3.5.1 Best interests of the child

The principle of the best interests of the child is also commonly expressed in a substantial number of statutes in view of the overwhelming provisions which are specific to child protection and the consequent need to take actions in respect to the child at different levels of intervention.

The way in which this principle is expressed also varies across statutes. Countries such as Estonia, Kyrgyzstan and Sierra Leone and Tunisia have adopted provisions which reflect the CRC word for word (the best interests of the child shall be a primary consideration).

In comparison, Ecuador, Haiti, Latvia, Lithuania, Uzbekistan, and Azerbaijan adopted provisions which have the same meaning as the best interest provision of the CRC: best interests of the child shall take priority/superiority. In the case of Uzbekistan, “the rights and duties of a child’s parents, legal guardians and other persons legally responsible for him/her shall also be subordinate to the child’s best interests.” The statute of South Africa regards the child’s best interests to be of paramount importance.

In the application of this consideration, some countries have also maintained a balance between the interests of the child and the family (for example South Africa and Tunisia) and between the rights and duties of the child (Ecuador, for example).

Compared to the CRC, higher standards may be said to exist under the provisions of the Gambia, Ghana, Goa, Jersey, Lesotho, Mali, New Zealand, Nigeria

251 Section 3.
252 Article 3(1).
253 Article 4.
254 Article 3(1).
255 Article 11.
256 Articles 3-5.
257 Article 6.
258 Article 4(1).
259 Article 5.
260 Article 5.
261 Sections 6(1), 4(1) 5 and article 5 respectively.
262 Section 9 of the Children’s Act, 2005.
263 Ibid. Section 7.
264 Article 7.
265 Article 11 (b).
266 Article 11 (b).
267 Section 3(1).
268 Section 2.
269 Section 3(7).
270 Section 2(1)(b).
271 Section 3 (2).
Uganda and the United Kingdom. These generally stipulate the principle in terms of the paramount/primary consideration compared to the CRC which expresses the principles as a paramount consideration. Similarly, in the case of Azerbaijan, article 5 of the child statute mandates the State to give superiority to the interests of the child, which is expressed in the following way:

The state authorities and all the physical and legal entities must prefer the interests of the child in their activities and must create conditions to ensure the rights of the child. The legislative and legal acts of the Republic of Azerbaijan and the decisions of the relevant authorities shall not run counter to the interests of the child and their implementation shall not damage the lives, growth and upbringing of children. Any act that restricts the rights and interests of the child shall be deemed invalid.

Yet there are other countries (e.g. Kenya and Romania) which adopt a “hybrid approach,” expressing the CRC provision in one breadth and a higher standard in another. By way of comparison with the above examples, two country provisions (Kenya and Romania) are set out in box 3.4.1 below.

**Box 3.4.1: Hybrid approaches to expressing the principle of the best interests of the child from Kenya and Romania.**

**Kenya:**
In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

All judicial and administrative institutions and all persons acting in the name of these institutions, where they are exercising any powers conferred by this Act shall treat the interests of the child as the first and paramount consideration ...

**Romania:**
1. The present law, any other regulations adopted in the field of observing and promoting the rights of the child, as well as any legal act, issued or, if the case, signed in this field, are subordinated primarily to the child’s best interests. 2. The best interests of the child also take priority over the rights and duties of the child’s parents, legal guardians, or other persons legally responsible for him or her. 3. In all actions and decisions concerning children, whether undertaken by public authorities and authorized private institutions, as well as courts of law, the best interests of the child shall be a primary consideration.

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

The third principle of the right to life, survival and development has been given wide expression across most statutes, and generally replicate the provisions of article 6 of the...
CRC. The most visible variation can be found under the statutes of Ecuador and Haiti, under which the right to survival and development is recognised from the moment of conception.

Taking Ecuador as an example, article 20 of its Code notes that “children and adolescents have right to the life from their conception. It is obligation of the State, the society and the family to assure at all costs to his reach, its survival and development.

3.5.3 Respect for the views of the child

Respect for the views of the child, often referred to as the right to participation, has been similarly recognised on a wide scale. Apart from stipulating that the hearing of children above the age of ten years is mandatory, Romania’s statute also stipulates that the right to be heard in judicial and administrative proceedings must encompass the following:

- To request and receive pertinent information;
- To be consulted;
- To express an opinion;
- To be informed about the consequences which his or her opinion may generate;
- To be informed about the overall consequences of the decisions to be taken.

Under the Brazilian statute, provisions are also made for children and adolescents to contest educational assessments with the right of appeal to higher levels of school authority (a.53 (2)-(4)). Additionally, adolescents deprived of their liberty have the right to seek personal audience with the representative of the public prosecution service with a view to seeking redress on a matter affecting their welfare (a. 124).

Box 3.5.3.1: Provisions of Mexico on participation rights of children and the youth.

Children and the youth shall have the right to exercise their skills to give an opinion, analyze, criticize, and submit proposals in any field related to them: family, school, society or any other, with no other limitations than those imposed by the Political Constitution or the United Mexican States and the respect for the rights of others.-Article 39.

It is also significant that the statute of Tunisia proactively recognises the collective voices of children and thereby legislates on the creation of a Children’s Parliament.

Box 3.5.3.2: Tunisia recognises the collective voices of children

Children will also be given the opportunity to organize in a setting that would allow them to express their opinions on topics regarding their rights, to get used to the exercise of their responsibilities, the development of the sense of civic duties and the promotion of the culture of children’s rights. This setting will be known under the name “Parliament of Children.-Article 10 (b).

Of emerging interest is the capacity conferred by law to children to institute legal proceedings in their own right. Countries with such a provision include Gambia, Ghana, Mexico, and others.

278 Examples include Bulgaria(a.12), Estonia (s.16), Gambia (a.17), Ghana (a.11), Kenya (s.4(3)), Kyrgyzstan (a.3(7)), Latvia (s.13(1)), Mexico (aa. 38-41), Myanmar (s.13) Nigeria (s ) Romania (aa. 6(h) and 23), South Africa (s.10), Trinidad and Tobago (s.8 of Act No. 68 of 2000), Tunisia (a.10), Mali (a.9) and Uzbekistan (a.14).
279 Article 24 (3).
280 Section 13(1).
281 Section 40.
Myanmar,\textsuperscript{282} Romania\textsuperscript{283} and South Africa.\textsuperscript{284} With respect to Gambia, capacity to sue can also relate to an event that took place prior to birth.

**Box: 3.5.3.3: Provisions on the legal capacity of children from Gambia**

**Gambia:** A child may bring an action for damages against a person for harm or injury caused to the child wilfully, recklessly, negligently or through neglect before, during or after the birth of that child-section 13(1).

Shades of differences also arise in relation to the *capacity of the child to enter into contractual relations*. Whereas the statutes of Gambia and Nigeria indicate that a child cannot be held liable for an act or omission arising under a contractual obligation,\textsuperscript{285} the statute of Myanmar generally makes it possible for a child to *sue and be sued*.\textsuperscript{286} In Ecuador, contractual legal capacity commences from the age of 15 years, which coincides with the minimum age of employment and period for participating in organised labour.\textsuperscript{287}

### 3.6 Civil rights and freedoms (Articles 7, 8, 13-17 and 37a)

#### 3.6.1 The right of the child to an identity

The right to an identity (name, birth registration and nationality) and to live and be cared for by natural parents (unless there is risk of exposure to harm) are guaranteed in several statutes.\textsuperscript{288} The provisions of Mali and Tunisia\textsuperscript{289} define *identity* to encompass a child’s first name, family name and nationality, whereas in the case of Ecuador, it also includes cultural identity.\textsuperscript{290} In the case of Nepal\textsuperscript{291} and Romania,\textsuperscript{292} social workers are to be employed in medical institutions to ensure that newly born and abandoned children are not deprived of the right to be registered. Birth certificates are to be issued *within 24 hours of birth*.\textsuperscript{293}

The statute in Haiti takes account of circumstances of birth within and outside of health institutions and therefore requires a *record of birth* to be made prior to actual registration.\textsuperscript{294} Similarly, Ecuador ensures that children of indigenous populations are given the right to register their births in the language of their choice. The civil registry is therefore required to take steps to put procedures in place to make this possible.\textsuperscript{295} In Lesotho, the right to a name is expressed as *a decent name* and registration must take place *within three months* of birth,

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\textsuperscript{282} Section 25 (c)

\textsuperscript{283} Article 29.

\textsuperscript{284} Section 15(a).

\textsuperscript{285} See sections respectively.

\textsuperscript{286} Section 25(c).

\textsuperscript{287} See article 7.

\textsuperscript{288} Example, those of Azerbaijan (aa. 10,27-28), Belarus (a.20), Belize (s.4), Brazil (a. 102), Ecuador (aa.21, 33-35), Estonia (s.9), Gambia (a.7(2)), Ghana (ss.4-5), Haiti (Section 2), Indonesia (aa.5 and 7), Kazakhstan (a.9 and chapter 4), Kyrgyzstan (aa. 18 & 19), Latvia (s.8), Lesotho (ss.6-7), Lithuania (aa.9 and 23), Mali (a.4) Mexico (aa.22-24). Myanmar (ss.9-12), Nigeria (s.5), Romania (a.8), Sierra Leone (ss.23-24), Trinidad and Tobago (Section 1 of Second Schedule to Act No. 68 of 2000), Tunisia (aa. 5 and 11),Turkmenistan (a.7) and Uzbekistan (aa. 7 and 12).

\textsuperscript{289} Articles 4 and 5 respectively.

\textsuperscript{290} Article 34.

\textsuperscript{291} Sections 4 and 3(2) respectively.

\textsuperscript{292} Section 9.

\textsuperscript{293} Article 10(1).

\textsuperscript{294} See article 7.

\textsuperscript{295} Article 36.
whether or not the child was born alive or still born. Brazil, however, introduces an innovative provision by extending means of proof of identity of new born babies to include record[s] of their sole and finger prints and their mothers’ finger-prints. Establishments are also obliged to supply a declaration of birth in which the circumstances of the birth and neonatal status are recorded (aa. 228-229).

3.6.2 Proof of parentage

In Nepal, patrilineal principles have been used to formulate provisions on responsibility for naming a child. Under section 3(1) of its statute, the responsibility lies with the father or if unavailable, with the mother, who, also if unavailable, transfers this responsibility to the family of the father of the child. Conversely, in Azerbaijan, Belarus, Ghana and Uzbekistan, the responsibility for naming a child lies with both parents.

In some instances, judicial intervention can be sought to ascertain the parentage of a child where this is in doubt, has been challenged or needs to be ascertained. Under the statutes of Belize, Gambia, Ghana, Jersey, Lesotho, Lithuania, Namibia, Saskatchewan, Sierra Leone, Uganda and United Kingdom, this can be done using scientifically approved means. In South Africa, provisions are made for a man to establish his paternity where he was not married to the mother of the child. However, this cannot be possible where the person conceived the child through rape, incest, or where he was biologically related to the child by reason only of being a gamete donor for purposes of artificial fertilisation. The law additionally sets out the conditions under which surrogate motherhood agreements can be made. This is in contrast to Belize’s patrilineal principles in informing parental rights where a child is born to unmarried parents. In South Africa, the rules lean towards matrilineal principles, specifying that the biological mother of child, whether married or not, shall be provided with full parental responsibilities, with the following applying to a mother who is a child:

(a) If the biological mother of a child is an unmarried child who does not have guardianship in respect of the child and (b) the biological father of the child does not have guardianship in respect of the child, the guardian of the child’s biological mother is also the guardian of the child.

296 Sections 6-7.
297 Article 10 (2).
298 Articles 10, 20, 6(4) and 12 respectively.
299 PART IV.
300 PART XI.
301 Section 40.
302 Section 6.
303 Article 202.
304 Article 21(3).
305 PART III.
306 PART VI.
307 Sections 82-84.
308 Section 54.
309 Section 89.
310 Section 26(2).
311 See Chapter 19 for full details.
312 Section 19.
The same principle applies to determine the rights of married and unmarried fathers. In the case of the former, full parental rights and responsibilities are given if the father was married to the mother of the child, including the point of conception, birth or anytime in between. In the situation of the latter, however, parental rights and responsibilities are given upon meeting specific conditions, such as whether he is living with the mother or identifies with the child through maintenance provisions.

Integral to parental rights are issues of custody and access fully regulated in some jurisdictions, with a view to ensuring that children grow up knowing both parents in a manner that is in their best interests. An example of such a provision is stated under the Saskatchewan law (see box 2.4.1 below).

Box 3.6.2: Provisions on child custody and access from Saskatchewan

Under the law of Saskatchewan, the court is required, when making an order for custody or access, is to do the following:

(5) (a) Give effect to the principles that a child should have as much contact with each parent as is consistent with the best interests of the child and, for that purpose, shall take into consideration the willingness of the persons seeking custody to facilitate that contact; and (b) include in the order a condition requiring any person who has custody of a child and who intends to change the place of residence of that child to notify, as set out in sub section (6), any person who is granted access to that child of any other person who has custody of that child of: (i) change; (ii) the time at which the change will be made; and (iii) the new place of residence of the child.

In the case of South Africa, provision has been made for more than one interested person to be co-holders of parental rights and responsibilities and parental plans are agreed upon for purposes of delineation of their rights. In Namibia, mothers have sole custody of children born outside of wedlock until the child attains the age of seven, after which joint custody is transferred to both parents. A man who becomes a father through the act of rape is, however, denied sole custody rights but is nevertheless required to provide maintenance.

3.6.3 Other civil rights and freedoms

Other civil rights and freedoms are also given prominence under country laws (e.g. freedom of expression, freedom of thought, conscience and religion freedom of
association,\textsuperscript{320} freedom to seek, receive and part with information,\textsuperscript{321} the right to movement\textsuperscript{322} and the right to privacy).\textsuperscript{323}

Restrictions are placed on the right to information in some countries, under circumstances which may be inimical to the wellbeing of the child. For instance, under the statute of Brazil, publications and illustrations on alcoholic beverages, tobacco, guns or ammunition are prohibited and where for sale, such material are to be sealed with a warning covering their contents (aa. 71 and 79).

### 3.7 Family Environment and alternative care (Articles 5, 18.1, 18.2, 9, 10, 27.4, 20, 21, 11, 19, 39 and 25)

A review of country provisions indicates a growing attachment to the importance of the family environment as the natural place for the development and growth of the child.\textsuperscript{324} The Latvian statute serves as a model for demonstrating the importance of the family environment in nurturing the child. As Annex F indicates, it has stringent measures and procedures in place for the removal of a child from its natural environs.

In the spirit of Article 5 of the CRC, the provisions of Ecuador take account of both the nuclear and extended family system.\textsuperscript{325} Under the provisions of Mali, a child who has been separated from his or her parents has a right to remain in systematic contact with them in addition to other members of the household.\textsuperscript{326}

Significantly, the provisions of Azerbaijan,\textsuperscript{327} Bulgaria,\textsuperscript{328} Ecuador,\textsuperscript{329} Iceland,\textsuperscript{330} Mali\textsuperscript{331} and Uzbekistan also embody the principle of institutional care as a measure of final resort. In the case of Iceland, the provisions also spell out the support that must be given to the child and his or her family in the event of institutionalisation, including visitation rights of natural parents.\textsuperscript{332} The initial and second periodic reports of Brazil and Hungary\textsuperscript{333} respectively provide insight into country perspectives on institutional care. Important provisions and observations are contained in box 2.5.1 below.

\textsuperscript{320} See Azerbaijan (a.26), Belarus (a.26), Ecuador (a.62), Haiti (a.52), Kazakhstan (a.11), Latvia (s. 13(2), Lithuania (a.14), Mexico (a 42), Myanmar (s.15), Nigeria (s.6), Romania (a.26), Turkmenistan (a.18), and Uzbekistan (a.16).
\textsuperscript{321} See Azerbaijan (a.15), Belarus (a.11), Bulgaria (a.13), Ecuador (aa.45-47), Haiti (a.42, which states that “the State has the right to censure material so as to ensure that they are not harmful to the development of the child”. Also see articles 43-44), Indonesia (a.10) and Kazakhstan (a.11).
\textsuperscript{323} See Nigeria (s.9), Tunisia (a.6), Turkmenistan (a.10) and Uzbekistan (a.13).
\textsuperscript{324} See Belarus (a. 28), Bulgaria (a.16), Estonia (s.13) Ghana (ss.38-39), Iceland (a.58), Jamaica (ss.44-45), Jersey (s.73), Latvia (s.9(1)), Lithuania (a.10(1)), Mali (a.5) and Nigeria (a.15).
\textsuperscript{325} Article 98.
\textsuperscript{326} Article 10.
\textsuperscript{327} Article 31.
\textsuperscript{328} Article 26.
\textsuperscript{329} Article 96.
\textsuperscript{330} Article 33.
\textsuperscript{331} Article 81(1).
\textsuperscript{332} Article 81(1).
\textsuperscript{333} The statute itself could not be obtained for the study. However, see SPR: Hungary. 24/05/2005.CRC/C/70/Add. 25. Para. 41.
Box 3.7.1: Rights of children deprived of family care. Institutionalisation as a final measure in

Azerbaijan:

Children deprived of parental care shall be protected by having them adopted, transferred to guardians, foster families or other families and, if all this fails, placed in relevant child institutions—Article 31.

Brazil:

“The situation of the child placed in a home in Brazil constitutes a serious psychological problem, as there are various and simultaneous factors which impair the institutions performance of the substitute role of the family”.
Par. 237

Bulgaria:

(1) Placement of children in specialised institutions shall be done in the order and under the conditions specified by the effective legislative acts. (2) Placement of children under paragraph 1 shall be done only in cases where all possibilities for the child to stay in a family environment have been exhausted—Article 35.

Hungary:

“It is the fundamental principle of the Child Protection Act that the child’s parents have the fundamental responsibility for the upbringing and development of the child and that the State and the municipalities have to render appropriate assistance to them in performing their responsibilities. Any interference in the life of the family by the authorities is only admissible if it is unavoidable in the true interest of the child. Children removed from their family environment have in the first place to be placed with adoptive parents, foster parents or, if these are not possible, in children’s homes. As for the whole of the law, the definition of childcare and support, child welfare, children’s rights, vulnerability and relatives of the child is of utmost importance”.

Iceland:

(1) Before a child is placed in a home or institution under art. 79, the child protection committee shall attempt other supportive measures, unless it is deemed clear that these will not be efficacious. If it is necessary to place a child outside the home, a home or institution shall be selected with care, taking account of the needs and interests of the child in question. (3) The child protection committee must prepare the child for separation from the parents, and for the prospective placement. A child protection committee which arranges a child placement shall provide child and parents with the necessary support during the placement. The committee shall monitor the child’s physical and mental wellbeing, and the efficacy of the measures taken, among other things by regular visits to the home. A written agreement shall be made on the placement of each child—Article 80(1) and (3).

Some countries are increasingly providing legislative basis for State support to parents to assist them in keeping their children within the family environment. In the case of Nigeria, for instance, it is mandatory for the State to provide a wide range of social protection measures for children and families in need. Within its system of federal governance, it is also possible for the Federal Minister to declare a State government or authority in default of its duty where it fails to live up to legal expectations.

334 See Belarus (a.21), Ecuador (aa.21-22), Jamaica (s. 28(2)), Jersey (Part 3), Latvia (s.26), Lithuania (a.15), Mexico (a.10), Nigeria (Part 15), Pakistan (Part 1), Sierra Leone (s. 22(2)) and Romania (a.30(2)).
335 PART XV.
336 Section 203.
Other mechanisms for ensuring that children remain in a family environment include fostering, guardianship and wardship. In cases where a child is placed under an alternative arrangement other than the original family of its birth state, agencies are generally required by law to monitor their wellbeing as is evident from the statute of Iceland:

**Box 3.7.2: Monitoring of foster placement in Iceland.**

A child protection committee which places a child in foster care shall monitor the conditions and mental and physical wellbeing of the child, and the efficacy of the measures taken. The child protection committee shall visit the foster home at least once a year, and more often if deemed necessary. **Article 76.**

It is also important to appreciate that in South Africa, the concept of care giver has been extended to include “a child and youth care worker who cares for a child who is without appropriate family care in the community in addition to the child at the head of a child-headed household”.340

**Adoption**

A substantial number of statutes contain special provisions on adoption. These generally state the qualifications of the intended adopter, consents required of relevant persons, interim orders, devolution of property, and the circumstances under which the fact of adoption can be disclosed to the child. Under the statute of Ecuador, it is illegal to initiate adoption proceedings with respect to an unborn child. South Africa’s statute places an obligation on the State to create a register on adoptable children and prospective adoptive parents. Additionally, the provisions of Ecuador and Nepal also make it possible for adopted children to maintain contact with their natural family.

Circumstances under which knowledge of adoption can be extended to the adopted child have been outlined in the laws of Ghana, Lesotho and South Africa and Uganda. The provisions of Lesotho are provided below as a model example.

337 See Bulgaria (aa. 26(1) and 31), Gambia (Part 7), Ghana (s.62), Indonesia (a.38), Jersey (Part 8), Ireland (Part 4B), Latvia (s.27(3)), Lesotho (Part 7), Lithuania (a.26), Mexico (a.25), Nigeria (Part 11), Sierra Leone (s.104), Uganda (Part 6), United Kingdom (Part 9) and Uzbekistan (a.21);
338 See Belarus (a.29), Belize (ss.14-15), Brazil (a.36), Estonia (s.63), Gambia (Part 14), Haiti (aa.172-191), Iceland (a.32), Indonesia (aa. 33-35), Jersey (ss.7-8), Kazakhstan (aa. 17 & 27), Latvia (a.27(3)), Lesotho (s.208), Lithuania (a.25), Namibia (s.12), Nigeria (Part 9), Nepal (Chapter 3), New Zealand (s.110), Malaysia (s. 34(2)), South Africa (s.24) and Turkmenistan (a. 24(4))
339 See Belarus (a.29), Gambia () and Nigeria (Part 10).
340 Section 1.
341 Example, Azerbaijan (a.32), Belarus (a.29), Brazil (a.39), Ecuador (Title VII), Estonia (a.66), Gambia (Part 9), Ghana (s.65), Haiti (aa. 132-171), Indonesia (aa. 39-41), Kazakhstan (a.28), Kenya ( ), Lesotho (ss.59-65), Mali (a.19), Mexico (a. 25), Namibia (s.71), South Africa (Chapter 15), Uganda (Part 7) and Uzbekistan (a.20).
342 The Namibia and Uzbekistan provisions require the written consent of any child over the age of 10 years. See sections 71(6) (e) and 20 respectively.
343 Article 163(1).
344 Section 232.
345 Article 156.
346 Section 9.
347 Section 72.
348 Section 64.
349 Section 248(1) (a).
350 Section 55.
Box 3.7.3: Disclosure of adoption to a child in the statute of Lesotho

(1) An adoptive parent shall, under the guidance of a social worker, inform the adopted child of the fact that the child is adopted and the child’s parentage but this disclosure shall only be made if it is in the best interests of the child and if the child is of an understanding age. (2) No person other than the adoptive parent shall disclose the adoption to the adopted child. (3) Subject to subsection (1), the adopted child shall, where possible, have access to photos, letters or any form of artefacts that might help the child understand his/her roots better. (4) If the adopted child has any siblings, the child should be informed of any siblings and be helped to maintain a link with the siblings, either through visits, letters or other communication channels. (5) Any person who fails to comply with the provisions of this section commits an offence and shall on conviction be liable to a fine not exceeding hundred thousand maloti or to imprisonment for a term not exceeding two years or to both –Section 64.

In the area of inter-country adoptions, it is critical to note that some countries make direct references to the Hague Convention on Inter-country adoption and/or the Hague Convention on International Child Abduction (e.g. Ecuador, South Africa, and Trinidad and Tobago) and the Inter-American Convention on Conflict of Laws concerning the Adoption of Minors in the case of Brazil. Under these statutes provisions on adoption in general and inter-country adoptions in particular, are very elaborate. The statutes of South Africa and Trinidad and Tobago for instance have fully incorporated these standards as part of their respective statutes, while Ecuador additionally provides for the existence of bilateral treaties on adoption between it and the country of origin or residence of the applicants.351

Box 3.7.4: Uganda provisions on inter-country adoption

(1) A person who is not a citizen of Uganda may in exceptional circumstances adopt a Ugandan child, if he or she-

(a) Has stayed in Uganda for at least three years; (b) Has fostered the child for at least thirty-six months under the supervision of a probation and social welfare officer; (c) Does not have a criminal record; (d) Has a recommendation concerning his or her suitability to adopt a child from his of her country’s probation and welfare office of other competent authority; and (e) has satisfied the court that his or her country of origin will respect and recognise the adoption order.

(2) for the purposes of an application to which this section applies, the probation and social welfare officer referred to in subsection (1)(b) shall be required to submit a report to assist the court in considering the application; and the court may, in addition, require some other person or authority to make a report in respect of the application.

Other countries have strict provisions on inter-country adoptions, stating in general that they shall operate as a measure of last resort. Under the Brazilian statute, for instance, international adoption is an exceptional measure after all attempts at adoption in the country of origin have been exhausted and thereby guaranteeing the right of the child to live in his own country (a. 31).

Some of the requirements include, in the case of Brazil352 and Lesotho;353 submission of home study reports by the applicant’s home country, concerning his or her suitability to adopt a child and a licence of inter-State adoption in the case of Nigeria.354 In Mexico, federal states are required to lay down rules that would ensure the adoption of children and youth by

351 See article 182 for details.
352 Article 51(1), which provides that an applicant shall show proof, through a document issued by a competent legal authority, of being duly capable of adopting, in accordance with the laws of his country, as well as present a psycho-social study done by a specialised and authorized agency in the country of origin.
353 Section 65 (1) (d).
354 Section 144.
citizens from countries with adoption regulations and protection of rights equivalent at least to those existing in the case of domestic adoption. Some of the standards set by Uganda are outlined in box above.

*Exchange of monetary considerations* in any adoption proceeding is also expressly prohibited under some statutes (e.g. Belarus, Ecuador, Gambia, Ghana, and South Africa).

**Box 3.7.5: Liability for exchange of consideration in matters of adoption in Ghana.**

| (1) No person shall give any payment or reward in respect of an adoption order except with approval of the court. (2) No person shall receive any payment or reward in respect of any arrangement that may or may not lead to an adoption order. (3) Any person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding five million cedis or to a term of imprisonment not exceeding one year or to both. 
| Section 85. |

The move towards the family environment as first resort has been stated. As a corollary to this States have tended to regulate institutional care (including *Kafala*) by providing for minimum requirements on the setting up of institutions. The statute of Jamaica provides lessons with respect to the rights of the child when placed under the care of an institution as can be seen from box 2.5.6 below:

**Box 3.7.6: Rights of children placed in alternative family care, case study from Jamaica**

| A child in a place of safety, children’s home of in the care of a fit person shall have the following rights-
| 1. To be fed, clothed and nurtured according to prescribed minimum standards to be given the same quality of care as other children in the placement;  
| 2. To be consulted and, according to the child’s abilities, to express his views about significant decisions affecting the child; 
| 3. To reasonable privacy and to possession of the child’s personal belongings; 
| 4. To be free from corporal punishment; 
| 5. To be informed of the standard of behaviour expected by the care givers and of the consequences of not meeting the standard; 
| 6. To receive medical and dental care (including psychological care) when required; 
| 7. To participate in social and recreational activities if available and appropriate to the child’s abilities and interests; 
| 8. To receive the religious instruction, and as far as may be reasonably practicable, to participate in the religious activities, of the child’s choice; 
| 9. To be provided with an interpreter if language or disability is a barrier to consulting with the child on decisions affecting the child’s custody or care; 
| 10. To privacy during discussions with a family member or legal representative; 
| 11. To be informed about and to be assisted if the child so wishes, in contacting the Children’s Advocate; 
| 12. To be informed of the child’s rights under this Act and the procedures available for enforcing those rights. |

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355 Article 27.
356 Article 29.
357 Article 155.
358 Section 121 (1).
359 Section 83.
360 Section 249.
361 See Gambia (Part 16), Ghana Part 6), Iceland (a.79), Jamaica (s. ), Jersey (Part 7), Latvia (s.37), Lithuania (Chapter 10), Malaysia (Part 9), Nepal (Chapter 4), Myanmar (Chapter 16), Nigeria (s.48), Pakistan (s.83), Sierra Leone (Part 8), Thailand (Chapter 6), Uganda (Part 8) and United Kingdom (Parts 6-8)).
362 Sections 62.
Belarus\textsuperscript{363} and Romania\textsuperscript{364} serve as examples of States with provisions for reunification in the event of the illicit transfer of children. According to article 19 of the provisions of the Romania for instance, consular missions are required to inform the National Authority for the Protection of the Rights of the Child about unaccompanied children who are located abroad for arrangements for reunification\textsuperscript{365}.

3.8 Basic health and welfare (Articles 6.2, 23, 24, 26, 18.3, 27.1, 27.2 and 27.3)

Maternal and child health

Provisions on the right to health can be found under various statutes with variations based on both the CRC and other human rights frameworks.\textsuperscript{366}

\begin{center}
\textbf{Box 3.8.1: Law of Uzbekistan on the right to health}

A child has the right to an attainable level of health through the use of the most perfect services of the health-care system, and means of disease treatment and health rehabilitation.
\end{center}

Article 24 of the CRC provides that children shall have the right to the highest attainable standard of health. Ecuador however appears to possess a higher standard in its statute by its indication that children and adolescents have the right to enjoy the highest level of physical, mental, psychological and sexual health. Provisions on health for children and adolescents under the code of Brazil are also to be understood in the context of its \textit{Universal Single Health System} under which equal access to health promotion, protection and recovery programmes are guaranteed.\textsuperscript{367}

With a view to reinforcing the complementarity between the CRC and CEDAW, some laws express the right to health also in relation to both mother and child. For instance, Belarus,\textsuperscript{368} Brazil,\textsuperscript{369} Ecuador,\textsuperscript{370} and Kazakhstan\textsuperscript{371} expressly state that child and maternal health are linked. Taking the Brazilian statute as an example, expectant mothers are to be given preferential treatment by the same doctor who attended to them during their prenatal stage of development. The State is additionally under an obligation to provide food aid to an expectant woman. Similarly, Ecuador has made breastfeeding mandatory (at least for the first year of life of the child),\textsuperscript{372} and offers health services and family planning for adolescents.\textsuperscript{373} The Goa’s statute provides for guaranteed maternity leave, the creation of day care centres for working mothers and palliative care for terminal illnesses such as cancer and

\begin{footnotesize}
\begin{enumerate}
\item Article 37.
\item Article 19.
\item See Article 37 with respect to Belarus.
\item See Azerbaijan (a.9), Belarus (a.5), Brazil (Chapter 1), Ecuador (a.27), Gambia (s. 9(1)), Ghana (s.8), Goa (s. 5), Indonesia (a.8), Haiti (aa. 61-65), Kazakhstan (a.8), Latvia (s.12(2)), Lesotho (s.10), Lithuania (a.8), Mexico (Chapter 8), Myanmar (s.19), Nigeria (s. 13 (stated in terms of the CRC)), Romania (a. 43 (1) (stated in terms of the CRC), Turkmenistan (a.12), and Uzbekistan (aa. 11 & 24).
\item Article 11.
\item Article 5.
\item Article 8.
\item Articles 24-25.
\item Article 8.
\item See articles 24 and 30(9).
\item See Article 27.
\end{enumerate}
\end{footnotesize}
HIV/AIDS. Scientific experiments on children which are harmful to their health and normal development have also been proscribed under the provisions of Ecuador and Kazakhstan. Both countries have also taken account of environmental health under their health provisions.

Consent of parents, legal guardians or the child is not needed in the event of medical emergencies (example, Uzbekistan). In Lesotho and South Africa, HIV testing cannot be conducted unless it is in the best interest of the child and consent has been sought in line with the provisions. In this respect, provisions are also made for pre and post test counselling services, confidentiality and access to reproductive services. South Africa also stipulates access to health care information as a right. Additionally, children over 12 years of age have the right to obtain condoms at no cost, while at that same age the child can also access other forms of contraceptives without parental consent upon proper medical advice and examination and all such children are entitled to confidentiality. The provisions of Ecuador are also significant given that they place an express responsibility on the Health Sector Ministry to develop policies and programmes that will give effect to the provisions of the CRC. A significant innovation in the area of health can be found in the provisions of Ghana and Ecuador. Both place the implementation of the system of birth registration within the context of health delivery. This is to be appreciated as a strategy that will accelerate birth registration, given the comparative advantage that the health sector has over others in service delivery, especially in immunization coverage where success rates range between 80-100% across some countries.

Box 3.8.2: Legislative strategy to accelerate birth registration in Ghana.

| (1) The District Health Department of a District Assembly shall in consultation with the Department of the District Assembly be responsible for registration of births in the district. (2) The registration of births shall form part of the district primary health care programme – Section 121. |

3.9 Rights of children with disabilities

An overwhelming number of statutes have provisions on the right of the child with disabilities. These provisions are generally expressed within the context of integration and participation with a view to attaining self-reliance. Some also emphasise prevention, early detection and intervention measures, while a few (example, Haiti) reflect the requirements for the design of public infrastructure to serve the needs of the disabled child.

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374 Sub sections 2,3,5.
375 Article 25 (j).
376 Sections 241 (2) and 130 respectively.
377 Sections 243 and 132 respectively.
378 Sections 244 and 133 respectively.
379 Section 245.
380 Section 13.
381 Section 134.
382 See article 28.
383 See Azerbaijan (aa.35-36), Belarus (a. 4 guarantees free health care for disabled children), Belize (s.8), Ecuador (aa.42 and 55), Estonia (s.52), Ghana (s.10), Goa (a. ), Haiti (aa. 88-93), Indonesia (a.12), Kazakhstan (Chapter 6), Mali (a.16), Mexico (Chapter 9), Myanmar (s.18), Nigeria (s. ), Romania (a.46), Lesotho (s.12), Lithuania (Part 4), Sierra Leone (s. 29), South Africa (s.11. This includes provisions on children with chronic illness), Tunisia (a.17), Turkmenistan (a.31), Uganda (s.9) and Uzbekistan (a.31).
3.10 Harmful traditional practices

In line with the CRC, a few statutes treat harmful traditional and religious practices within the context of health (e.g. Myanmar\textsuperscript{384} and Uganda\textsuperscript{385}), while others have special provisions on some aspects of the subject. For instance, prohibitions on \textit{child marriage and betrothals} can be found under the statutes of the Gambia,\textsuperscript{386} Ghana,\textsuperscript{387} Lesotho,\textsuperscript{388} Nigeria,\textsuperscript{389} Sierra Leone,\textsuperscript{390} and South Africa.\textsuperscript{391} In all cases, efforts have been made to state these provisions in gender-neutral terms in order to avoid age discrimination in marriage between boys and girls. Under Haiti’s code, however, it is permissible for children between the ages of 16 and 18 years to marry with the consent of their parents or guardians.\textsuperscript{392}

\textit{Female Genital Mutilation} (FGM) is also explicitly prohibited in the statutes of Sierra Leone,\textsuperscript{393} Lesotho\textsuperscript{394} and South Africa.\textsuperscript{395} In the latter, male children above the age of 16 years cannot be forced to undergo circumcision without their consent.\textsuperscript{396} In Nigeria, \textit{tattooing and skin marks} have also been banned,\textsuperscript{397} while in South Africa, the provisions on FGM also include protection from \textit{virginity testing}.

3.11 The right of the child to an adequate standard of living

The statutes of Belarus,\textsuperscript{398} Haiti,\textsuperscript{399} and Kazakhstan\textsuperscript{400} on the rights of the child to a standard of living are noticeably expressed along the lines of the CRC as can be seen from box 2.6.3 below.

\textbf{Box 3.11.1: Provisions on the Belarus on the right of the child to an adequate standard of living.}

\begin{quote}
Every child has the right to adequate level of life and conditions necessary for full physical, mental and spiritual development. The state bodies through the system of social and economic measures provide the creation of such conditions.
\end{quote}

Under the latter, special provision has also been made to ensure that orphans are not deprived of housing.

\textbf{Box 3.11.2: Safeguarding the living standards of orphans in Lithuania.}

\begin{quote}
(3) An orphan left without parental care and guardianship and without a home to live in, shall be provided one according to procedure established by laws. (4) An orphan left without parental care and guardianship, may not be moved from his home without being provided a home of equal quality. (5) When parents or other
\end{quote}

\textsuperscript{384} Section 19 (b) (ii).
\textsuperscript{385} Section 7.
\textsuperscript{386} Section 24.
\textsuperscript{387} Section 14.
\textsuperscript{388} Section 16 (a)-(c).
\textsuperscript{389} Sections 21-22.
\textsuperscript{390} Sections 33 and 45.
\textsuperscript{391} Section 12 (1) a-b.
\textsuperscript{392} Article 51.
\textsuperscript{393} Section 3(1).
\textsuperscript{394} Section 16(d).
\textsuperscript{395} Section 12(3).
\textsuperscript{396} Section 12 (9).
\textsuperscript{397} Section 24.
\textsuperscript{398} Article 8.
\textsuperscript{399} Article 82.
\textsuperscript{400} Article 12.
legal representatives of the child shall implement inadequately or fail to implement the requirements set forth in Article 11 of this Law, the findings by an institution for protection of the rights of the child shall be required in the mortgaging, sale or giving away of the home where the child resides, to demonstrate that such transactions are not contrary to interests of the child—Section 13.

On the same issue, Kazakhstan has in place provisions on a minimum package of guarantees that constitute the ingredients for ensuring a reasonable standard of living for all children. Under article 18 therefore, State policy is to be directed towards free or moderately priced education, medical services, social security, housing and social protection to children in difficult circumstances.

For the majority of statutes however, article 27 of the CRC is expressed in terms of the right to maintenance primarily from parents and generally covers adequate food, clothing, shelter, education, health care, social security appropriate to the age and needs of the child.\textsuperscript{401} The codes of Belarus and Kazakhstan are worded in tune with the CRC. The heading in the former statute, for instance, is designated as a right to adequate level of life and provides that “every child has the right to adequate level of life and conditions necessary for full physical, mental and spiritual development. The state bodies through the system of social and economic measures provide the creation of such conditions”.

The type of maintenance orders that can be provided under the statutes of Ghana, the Gambia and Sierra Leone suggests that these countries have taken account of the rights of the mother in addition to those of the child. In line with article 11(2) (6) of the ACRWC, these provisions also ensure that an expectant mother is not deprived of her education.

Box 3.11.3: How the ACRWC provisions on the girl child are reflected in maintenance orders in Ghana, Gambia\textsuperscript{402} and Sierra Leone\textsuperscript{403}

\textbf{Article 11(2)(6) of the ACRWC:} States parties to the present Charter shall have all appropriate measures to ensure that children who become pregnant before completing their education shall have an opportunity to continue with their education on the basis of their individual ability.

\textbf{Forms of maintenance orders in Ghana, Gambia and Sierra Leone}

1. Medical expenses for the duration of the pregnancy, delivery or death of the child;
2. Periodic allowance for the maintenance of the mother during pregnancy and for a further nine months after delivery;
3. Payment of a reasonable sum for the continued education of the mother, if she is a child herself;
4. Periodic or lump sum payment for the maintenance of the child;
5. An order for arrears of maintenance in cases where the duty bearer defaults.

Variations exist between some countries in terms of the age at which child maintenance is to end for children. In Ghana, for instance, this ends on the 18th birthday of the child but can be extended to 21 in the event that the person is pursuing a course of study.\textsuperscript{404} In Haiti, maintenance can extend to a period which culminates in the attainment of a first degree or other professional certificate.\textsuperscript{405} It is also important to note that some State interventions have

\textsuperscript{401} This can be appreciated from the statutes of Azerbaijan (a.13), Belarus (a ), Belize (s.5(1)), Gambia (ss. 21 & 160(1)), Ghana (s.47), Haiti (a. 192), Jamaica (s.27(1), Jersey (Schedule 1), Kazakhstan (a.14), Latvia (s.10), Lesotho (Part 23), Mexico (a. 11), Nigeria (s. 14(2)), Romania (aa.44-45), Sierra Leone (s.89 (1)), Trinidad and Tobago (Second Schedule to Act No. 68 of 2000), Turkmenistan (a.8) and Uganda (s.76).

\textsuperscript{402} Section 165.

\textsuperscript{403} Section 93.

\textsuperscript{404} Section 54.

\textsuperscript{405} See article 192.
been provided for within the context of social protection or social security where parental maintenance is either not available or inadequate. Such provisions are more common in Latin American and Eastern European countries such as Ecuador, Latvia and Uzbekistan and are in line with general government policy of supporting the vulnerable population. Similar provisions are also present under the laws of Haiti and Nigeria.

**Box 3.11.4.: Provisions on Latvia in relation to state support to children without parental support.**

12 (3) A child, who is not receiving adequate parental care, has the right to State and local government assistance. (4) A State and local government shall ensure the material conditions necessary for life of each orphan and child left without parental care.

### 3.12 Economic rights of the child

Economic rights are generally expressed in terms of the right to inheritance and manage property and the right to work. The right to inherit is guaranteed under a number of statutes of several States. Gambia and Nigeria provide for unborn children to be considered in the distribution of parents who die intestate. Ghana, Lesotho, Namibia and Sierra Leone have also adopted the provisions of the UNDHR with respect to children born out of wedlock. Novel provisions exist in the statute of Lesotho for the administration of the estate of a surviving child to be done under the strict supervision of the State. As such, the permission of the Master of the High Court must be sought by a surviving parent, guardian, closest relative or any member of the community for any alienation, disposal or sale of a child’s property. Similarly, in Saskatchewan, guardianship provisions are made for the protection of a child’s property. The statute of Namibia is unique in terms of the inheritance rights of a child born as result of sexual assault (see box 2.6.7).

**Box 3.12.1: Provisions on Namibia on the inheritance rights of a child born out of sexual assault**

With respect to rape which results in the conception of a child born outside marriage, the person who committed the crime has no right to inherit intestate from the child, but the child may inherit intestate from the perpetrator, and will be deemed to be included in the terms “children” or “issue” of any similar term used in a testamentary disposition: Provided that this provision applies only in cases of rape which have resulted in a criminal charge or conviction. -Section 14(4).

Under the codes of Kazakhstan, Latvia, Lithuania and Uzbekistan, it is possible for a child to conduct transactions with a view to realising ownership rights in property as prescribed by law. In Kazakhstan, this also includes intellectual property.

Some child labour provisions also state expressly that children have a right to work provided all other conditions have been met. Additional provisions are therefore created for their

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406 Article 31.
407 Article 32.
408 Articles 82-83.
409 Example, Azerbaijan (a.21), Belarus (a.19), Gambia (s.15), Ghana (s.7), Haiti (a.208), Kazakhstan (a.13), Lesotho (s.18), Lithuania (aa. 4(6) and 12), Myanmar (s.25(a)), Namibia (s.14), Sierra Leone (s26), Turkmenistan (a.2), and Uzbekistan (a.23).
410 Sections13 (2) (3) and 17(2) (3) respectively.
411 See full provisions of PART IV. For similar provisions, see articles 208-234 of the law of Haiti.
412 PART V.
413 Sections 14 (2), 12 and 23 respectively.
414 Article 11.
protection as workers. For example, the statutes of Brazil, Ecuador, Kazakhstan and Mali provide guarantees that are on equal terms with adults including the right to join a trade union of their choice.

Box 3.12.2: Property rights of children in Uzbekistan

Property received by children in accordance with the procedures, specified by law as a gift, inheritance, as well as gained by personal work and in the result of entrepreneurship shall be their property. The funds, invested by children into business and income gained in the result of the business shall be their personal property if there is no agreement signed between children and parents or other members of family, specifying different procedures. Every child shall be entitled to use, own and manage his property on his own, including the right to carry out transactions on the terms and in accordance with the procedures, specified by the law of the Republic of Uzbekistan—Article 23.

3.13 Education, leisure and cultural activities (Articles 28, 29 and 31)

The right to education, as expressed under the CRC, may be found under various laws with some variations. Pre-school education is guaranteed under the codes of Brazil, the Goa, Haiti, Latvia and Romania. Under the latter, the State is also required to develop programmes for young parents, special training for children who cannot meet the demand of the national curriculum and special training for school drop outs. Brazil and Ecuador also take special account of the requirements of working children, providing under article 54 (6) of the former that opportunities shall be provided for regular night studies, under suitable for adolescent workers. Additionally, in line with Article 2 of the CRC, the statute of Estonia guarantees that ethnic minorities will have the right to acquire education in their native languages.

Significantly, the codes of Ecuador, the Goa and Latvia also provide for the integration of human rights into the in Ecuador and Latvia, it also includes education on the rights of the child.

Box 3.13: Law of Latvia on child rights education.

19 (1) The State shall ensure that each child has the opportunity to acquire, in primary and in secondary school or in a comparable educational institution, a basic knowledge of the rights of the child in accordance with the Education Law. (2) The State shall inform the public about the provisions of this Law and other laws and regulatory enactments adopted in the area of the protection of the rights of the child and about the principles of international law in this area.

Nigeria’s code has been ingeniously crafted to take account of both the provisions of the CRC and the ACRWC. Noticeably, for instance, section 15 (5) takes account of the rights of the female pregnant child (as already quoted in box) in the following terms:

415 Chapter V.
416 Article 65.
417 Article 16.
418 Article 34.
419 Example, Azerbaijan (aa.22-23), Belarus (a.23), Brazil (Chapter 4), Ecuador (aa. 37-38), Estonia (ss. 12 & 39), Gambia (s. 18, with special reference to basic education), Ghana (s. 8(1)), Goa (s.4), Haiti (aa. 70-77), Indonesia (a.9), Kazakhstan (a.11), Latvia (a. 11 (1)), Lithuania (a.14 and Chapter 5), Mexico (a.32), Myanmar (s.20), Nigeria (s.14), Romania (a.47), Turkmenistan (a.13) and Uzbekistan (a.33).
420 Article 48(1).
421 Section 11 (3).
422 Section 19.
A female child who becomes pregnant, before completing her education shall be given the opportunity, after delivery, to continue with her education, on the basis of her individual ability.

Prohibition of abuse within the context of education has been reflected in some statutes. For example, corporal punishment within the educational setting is expressly banned under the statutes of Ecuador, Haiti, and Romania, while Ecuador even goes further by banning sexual abuse.

Right to rest, leisure and participation in positive cultural activities are provided for in a substantial number of statutes and generally conform to the wording of the CRC.

3.14 Special protection measures

3.14.1 Children in need of special protection

The subject of children in need of special protection has been a specific subject of the Committee’s concern in more recent times. This may be seen from a review of recent recommendations to Azerbaijan, Kenya, Myanmar, Saudi Arabia, Solomon Islands and Sweden. States have however been generally proactive in their inclusion of specific provisions in the areas as may be seen from the overwhelming number of countries which have included specific provisions in their statutes without such recommendations being made. In general, the provisions encompass protection measures with respect to children who are without parental guidance, support and those exposed to moral, physical or emotional danger. The provisions of Myanmar, as indicated in box 2.8.1, serve as a simplified version of what is contained in most country statutes.

Box 3.14.1.1: Who is a child in need of protection in Myanmar?

- One who has no parents or guardian;
- One who earns his living by begging;
- One who is of so depraved a character that he is uncontrollable by his parents or guardian;
- One who is in the custody of a cruel or wicked parent or guardian;

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423 Article 40.
424 Article 78.
425 Section 4(12).
426 Article 41.
427 See Azerbaijan (a.25) Belarus (a.25), Ecuador (aa. 43 & 48), Gambia (a.16), Ghana (s.9), Haiti (a.56), Indonesia (a.11), Latvia (s.16), Lesotho (s.11), Lithuania (a.16), Mexico (aa. 33-35), Myanmar (s.23), Nigeria (s. 12), Sierra Leone (s. 28), Romania (a.48(2)), Turkmenistan (a.15), Uganda (s. 4 of the First Schedule) and Uzbekistan (a.38).
429 See 2007 CO of the Committee (yet to be published on UN Treaty web site).
430 See 2004 CO of the Committee (yet to be published on UN Treaty web site).
431 See CO: Saudi Arabia. 17/03/2006.CRC/C/SAU/CO/2.
432 See CO: Solomon Islands. 2/07/03.CRC/C/15/Add.208.
433 See CO:Sweden.10/05/99.CRC/C/15/Add.101.
434 See Estonia (a.32), Gambia (s.76), Ghana (s.18), Goa (s.10), Iceland (see Act in totality), Ireland (Part 4A), Jamaica (Part 1), Jersey (Part 5), Kazakhstan (a.1), Kenya (s.119), Latvia (Chapter 8), Lesotho (Part 3), Malaysia (Section 17. Section 38 includes children in of protection and rehabilitation. Section 41 covers children in urgent need of protection), Mali (a.50), Myanmar (s.32), New Zealand (s.14), Pakistan (Part 1), Nigeria (Part 5), Sierra Leone (s. 59), Singapore (Part 2), South Africa (Chapter 9), Thailand (s.32) and Trinidad and Tobago (Part 3).
435 See Appendix 6 for the more detailed provisions of Kenya.
One who is of unsound mind;
One who is afflicted with a contagious disease;
One who uses a narcotic drug or psychotropic substance;
One who is determined as such from time to time by the Social Welfare Department—Section 32

The statute of Iceland extends these protections to the unborn child, especially in circumstances where the mother is herself a child. Lesotho, Malaysia and Nigeria make additional provisions for children in need of urgent protection. In the case of the latter they include children at risk of sexual abuse, forced marriage and children of suicidal tendencies. Mali’s code also identifies street children as a special category of children in need of special care and protection.

In the Goa, girls are placed within the category of children in difficult circumstances. The statute therefore provides a gender dimension to the protection of their rights through a combined application of both CRC and CEDAW provisions. How this is done is set out in box below 3.14.2:

**Box 3.14.1.2: Showing the application of the CRC and CEDAW to girls in difficult circumstances by Goa.**

<table>
<thead>
<tr>
<th>The State shall develop and implement comprehensive policies, plans of action and programmes for the survival, protection, development and advancement of the girl child to promote and protect the full enjoyment of her human rights and to ensure equal opportunities for girls and all these plans should form an integral part of the total development process.</th>
</tr>
</thead>
<tbody>
<tr>
<td>The State shall ensure the elimination of all forms of discrimination against the girl-child which result in harmful and unethical practices, such as pre-natal sex selection and female foeticide and infanticide and towards this the State shall promote and support all endeavours that help give the girl child a sense of self-esteem, which would include gender sensitization programmes at all levels.</td>
</tr>
<tr>
<td>The State shall encourage educational institutions and the media to adopt and project non-stereotyped images of girls and boys and to eliminate child pornography and degrading and violent portrayals of the girl-child.</td>
</tr>
<tr>
<td>The State shall ensure dissemination of information and education to girls, regarding the physiology of reproduction, reproductive and sexual health. Section 11.</td>
</tr>
</tbody>
</table>

These provisions generally require pro-active engagement of social welfare officers and law enforcement agencies in protection, prevention, rescue, investigation, treatment and rehabilitation of affected children in line with the provisions of Article 19 of the CRC. In Ghana and Thailand, for instance, authorities are required to act in both situations of actual violation and suspicion of violation, while in Latvia, “matters related to child protection are to be dealt with by specialists who have relevant knowledge in the sphere of the rights of the child and who are especially trained to work with children and submission and complaints are to be examined without delay.”

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436 Article 30.
437 Section 80.
438 Section 42.
439 Articles 59-60.
440 Section 59-60.
441 Section 20.
3.14.2 Children in situations of emergency (Articles 22, 38 and 39)

Some statues expressly extend protection to child refugees, foreigners, children affected by natural disasters and others within the geographical confines of the country. In some cases, these include provisions on reunification and non return (e.g. Ecuador, Kazakhstan, Latvia, and Uzbekistan), while the statutes of Ecuador and Mali expressly recognise the application and observance of international humanitarian law. Under the Haitian statute, it is also “illegal to use children as human shields of war or to break into health care facilities, schools or other facilities sheltering children.”


<table>
<thead>
<tr>
<th><strong>Article</strong></th>
<th><strong>Provisions</strong></th>
</tr>
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<tbody>
<tr>
<td>(1) Every child has the right to protection from illicit displacement or non-return from a foreign country.</td>
<td>(2) Child’s trip abroad may take place only after notification and consent of both parents. Any disputes on this issue between parents shall be resolved by a court. Parents or persons replacing them shall inform relevant bodies about disappearance of a child from his residence place within 24 hours after his disappearance was noticed. (3) Children, who are not accompanied during their trips by parents or persons replacing them, shall have a guaranteed right to return home within shortest period of time to his/her legal representatives. (4) Representative offices of the Republic of Uzbekistan abroad shall inform about any children –citizens of Uzbekistan, who are not accompanied during their trips by parents or persons replacing them, and take measures to return them to their parents. In case if they are not identified, the court shall issue decision to refer the children to children’s institutions. (5) The issues of returning children, who are not accompanied during their trips abroad by their legal representatives, shall be resolved on the basis of bilateral agreements of the Republic of Uzbekistan with relevant foreign states.</td>
</tr>
</tbody>
</table>

Although the statute of the United Kingdom does not make express reference to children under similar difficult circumstances, a number of legal and policy developments within the country provide clarity regarding the social service entitlements of unaccompanied children and young persons. These legal and policy statements are contained in the *Hillingdon judgement and Local Authority Circular of 2003*. They make explicit the level of support that is expected from local authorities for unaccompanied children and young persons. This support includes the following:

- All unaccompanied children should on arrival, be supported under section 20 of the Children’s Act of 1989 until an assessment has been completed;
- Based on assessment of need, most unaccompanied children, including 16 and 17 year olds, should be provided with section 20 support;
- The majority of unaccompanied young persons will be entitled to leaving care services;

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442 Example, Azerbaijan (aa. 38-39), Belarus (aa. 32 & 34), Ecuador (aa. 15(2) and 57), Estonia (s. 67), Haiti (aa. 37-39), Indonesia (aa. 60-62), Kazakhstan (aa. 2 & 42), Latvia (s.74), Lithuania (a.18) Mali (a.17), Pakistan (s.), Romania (aa.3&72), Tunisia (a.18) and Uganda (Section 4(b) of First Schedule ).

443 Article 77.

444 Article 42.

445 Section 75

446 Article 42.

447 This issue is provided for in more detail under the Immigration, Asylum and Nationality Act of 2006 (as amended).

448 This observation and what follows is extracted from a report of Save the Children U.K.; (2005) on Local Authority support to Unaccompanied Asylum-Seeking Young People. *Changes since the Hillingdon Judgement (2003).* Written by Elli Free. P.5.

449 Section 20 of the Act sets out the circumstances under which a child in need can be provided with accommodation.
- Section 17\(^{450}\) (which generally provides less care and support than section 20), can be used to accommodate unaccompanied children in exceptional circumstances.

As mentioned previously (under ‘age for recruitment into the armed forces’), there is an increased tendency to protect children from armed conflicts in line with the Optional Protocol to the CRC on the involvement of Children in Armed Conflict. With the exception of Azerbaijan, all other countries seem to be in compliance with the new minimum age of participation in armed conflict as spelt out in the Protocol. The box below sets out the provisions of Azerbaijan, Belarus, the Gambia, Nigeria, Sierra Leone and Uzbekistan as case studies.

**Box 3.14.2.2: Provisions on the protection of children from armed conflict and age limits: Case studies of Azerbaijan, Belarus, Gambia, Nigeria, Sierra Leone and Uzbekistan**

**Azerbaijan:** The state of Azerbaijan undertakes to protect children in the areas, where it is involved in military conflicts, in accordance with the norms of international law. The military authorities shall take every opportunity available to move children in the zones of military operations to safety and protect their life and health. The direct participation of children who are aged below 15 in military hostilities shall be prohibited. The rules of involvement of children in military education facilities shall be determined in line with the relevant laws of the Republic of Azerbaijan—article 37.

**Belarus:** Engaging children to take part in military operations, armed conflicts, propaganda of war and violence among the children, creating children's militarized formations are prohibited. Draft of persons for the periodic military service in the armed forces and other military regiments of the Republic of Belarus is realized at reaching 18 years of age by them. Draft of persons under 18 for the military service as the cadets of military schools, for the studies at the Suvorov's Military schools, pupils of the military orchestras is regulated by the legislation of the Republic of Belarus—Article 33.

**Gambia:** A child shall not be recruited into any of the branches of the armed forces of The Gambia or other security agencies. (2) The Government or any other relevant agency or body shall ensure that no child is directly involved in any military operations or hostilities—section 59.

**Mali:** Every child shall benefit from all the guarantees under international humanitarian law ratified by Mali. It shall be unlawful for any person to cause a child to participate in armed conflict, or to enlist in the armed forces or any militia group before the age of 18 years—Article 17.

**Mexico:** Boys, girls and adolescents have the right to be protected against warfare, natural disasters, cases of refuge or displacement and recruiting into the armed forces—Article 21 ©

**Nigeria:** (1) No child shall be recruited into any of the branches of the armed forces of the Federal Republic of Nigeria. (2) The Government or any other relevant agency or body shall ensure that no child is directly involved in any military operations or hostilities—Article 34.

**Sierra Leone:** (1) Every child has the right to be protected from involvement in armed or any other kind of violent conflicts. (2) The Government shall not (a) recruit or conscript any child into military or para-military service or permit such recruitment or conscription by the armed forces; (b) use or permit the use of land mines and other weapons declared by international instruments to be adverse to children—Section 27.

**Uzbekistan:** Persons shall be recruited for military service into the Armed Forces and other military units after they are 18 years of age. The law of the Republic of Uzbekistan regulates the issue of recruiting minors under 18 for training in military institutions, military orchestra as cadets. Involvement and forced participation of children in wars and armed conflicts, propaganda of war and violence among children, establishment of military units shall be forbidden—article 45.

\(^{450}\) Section 17 grants the discretion to the local authority to provide a range of services to a child in need, depending on individual circumstances.
Rather than making explicit reference to the involvement of children and adolescents in armed conflict, provisions of Brazil’s statute is to be distinguished from the aforementioned as they restrict children’s access to weapons, explosive devices, ammunition or to publications containing references to arms or ammunition (see aa. 79, 81 and 243).

3.14.3 Children in conflict with the law (Articles 40, 37 and 39)

Provisions on the protection of the child from torture or other cruel, inhuman or degrading treatment or punishment as stipulated in Article 37 (a) of the CRC (or expressed in the code of Brazil as any inhuman, violent, terrifying, harassing or embarrassing treatment (a.18)), exists in a number of statutes.451

The statute of Estonia provides that “it is prohibited to humiliate, frighten or punish the child in any way which abuses the child, causes bodily harm or otherwise endangers his or her mental health”,452 Crime prevention among children is a key emphasis under the statute of Haiti,453 whereas the introductory provisions to the statutes of Kazakhstan Lesotho,454 Mali455 Mexico and Tunisia456 suggest that sanctions imposed on a child in conflict with the law should be strictly rehabilitative.

Diversion457 is increasingly being expressed as a primary recourse to the treatment of juveniles. Elaboration of this is expressed in the statutes of Haiti,458 Indonesia459, Ireland460 Lesotho,461 Lithuania462 New Zealand463 Nigeria464 and Tunisia.465 The statute of Haiti requires diversionary measures in all cases where a minor criminal offence has been committed and in under such circumstances, out of court settlements are to be pursued in the manner shown in box 2.8.5 below:

Box 3.14.3.1: Diversion provisions from Haiti

<table>
<thead>
<tr>
<th>Article 274</th>
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<tbody>
<tr>
<td>Out-of-court settlement shall as much as possible aim at staying the prosecution of the child so as to enable the child’s rehabilitation and integration into his/her community and to prevent the reoccurrence of the offence.</td>
</tr>
</tbody>
</table>

451 Example, Belarus (a. 27), Estonia (a.31), Ghana (s.), Haiti (a.107), Indonesia (a.16(1), Kazakhstan (a.49), Latvia (a.9(2)), Lesotho (s.15(1)), Lithuania (a.10(2)), Mexico (a45 (a)), Nepal (s.7(1)), Nigeria (s.11), Sierra Leone (s.32 (1)), Romania (a.28(1)), Trinidad and Tobago (s.13 of Second Schedule (Part C) to Act No. 68 of 2000) and Tunisia (a.24).
452 Section 555. See similar provisions for Uzbekistan under section 47 (1).
453 Article 66.
454 Articles 48 and 45 (f).
455 Article 12.
456 Article 13.
457 Diversion is a mode of treatment which seeks to treat children in conflict with the law outside the formal criminal justice in so far as this is practicable.
458 Articles 272 and 283.
459 Article 16(3).
460 PART 4.
461 PART XIII.
462 Article 52.
463 Section 208. See Annex for full provisions.
464 Section 209
465 Article 14.
Article 275
The conditions for out-of-court measures are: The child accepting the responsibility for the offence committed, the child expressing readiness to ask for forgiveness from the victim, the child and his/her lawyer agreeing to abide by the out-of-court measures pronounced.

Article 277
Out-of-court settlements can include: Mediation between child and the victim, mediation between child and family, compensation for damages suffered by the victim, through an understanding reached between the victim, the child and his/her representative, cognizance of the financial standing of the child, an order to pursue formal education regularly, an order to agree to pursue vocational training, acceptance of a non-paid job in the general interest, taking into consideration the ability of the child to accomplish the said job and an order to accept education on road traffic.

Under New Zealand’s statute, a law enforcement officer is permitted to consider the possibility of issuing a warning or a formal police caution to a juvenile offender in place of prosecution. Provisions on mediation also exist for less serious offences under the statutes of Mali and Tunisia, both of which aim at out-of-court reconciliatory measures between the victim and the offender.

In Ireland, Lesotho, Mali, Myanmar, and Singapore, elaborate provisions also exist for establishing the age of a juvenile as a basis for deciding whether or not to submit the child to formal judicial review. In the case of Mali, submission into evidence of the birth certificate of the child or a certified true copy of it is to constitute legal proof of age.

Provisions on due process as outlined in the Covenant on Civil and Political Rights and the CRC have been provided for in some statutes and include the right to presumption of innocence, speedy trial and legal representation as expressed under the laws of a substantial number of States. In Ireland, for instance, children are guaranteed rights and freedoms equal to those enjoyed by adults. The position of the child as a subject of the rights is also evident in the provision that criminal proceedings shall not be used solely to provide any assistance or service needed to care for or protect a child. The following provisions of the statute of Ireland are also of importance:

Box 3.14.3.2: Provisions of Ireland the status of juveniles

96 (2) of PART 7:
Because it is desirable wherever possible-
To allow the education, training or employment of children to proceed without interruption,
To preserve and strengthen the relationship between children and their parents and other family members,
To foster the ability of families to develop their own means of dealing with offending by their children, and

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466 Sections 209-210.
467 Articles 121 and 113-114 respectively.
468 Section 256 of PART 12.
469 Sections 83-90.
470 Article 97.
471 Section 38©.
472 Section 41 of PART III.
473 Example Brazil (from a. 110), Ecuador (Title 10), Gambia (s ), Haiti (Title 3), Ireland (Part 7), Jamaica (Part 4), Lithuania (aa. 53-54), Malaysia (s ) Mali (Chapter 4), Mexico (a.46), Myanmar (ss. 37-49), New Zealand (Part 4), Nigeria (Part 20), Singapore (s. 42 of Part 3), Tunisia (aa.71-123) and Uganda (Part 10).
474 Section 96 (1) of PART 7.
475 Ibid.
To allow children reside in their own homes, any penalty imposed on a child for an offence should cause as little interference as possible with the children’s legitimate activities and pursuits, should take the form most likely to maintain and promote the development of the child and should take the least restrictive form that is appropriate in the circumstances; in particular, a period of detention should be imposed only as a measure of last resort.

Under the statutes of New Zealand and Uganda, cases affecting juveniles are to be handled expeditiously and without unnecessary delay. Cases which are not completed within three months after the child’s plea has been taken are to be dismissed and the child shall not be liable to further proceedings.\textsuperscript{476} Both Mali and Tunisia also call for specialist competency of juvenile adjudicative panels,\textsuperscript{477} while Nigeria goes a step further by legislatating on professional training of personnel dealing with juveniles with a view to ensuring their continued competence in the field. It also creates a specialised police force to deal with children in conflict with the law. The relevant provisions are as contained in box 2.8.7:

**Box 3.14.3.3: Training requirements of personnel involved in juvenile justice administration, the case of Nigeria.**

\begin{itemize}
  \item[(1)] Professional education, in-service training, refresher courses and other appropriate mode of instructions shall be utilised to establish and maintain the necessary professional competence of all persons, including Judges, magistrates, and officers of the Specialised Children’s Police Unit, supervisors and child development officers, dealing with child offenders.
  \item[(2)] Every Judge, Magistrate and other judicial officer, appointed to the Court shall be trained in sociology and behavioural sciences to ensure effective administration of the child justice system.
  \item[(3)] Persons employed in the child justice system shall reflect the diversity of children who come into contact with the child justice system and efforts shall be made by those concerned with the appointment of those persons to ensure the fair representation of women and minorities in the appointment.
  \item[(4)] Subject to subsection (2) of this section, political, social, sexual, racial, religious, and cultural or any other kind of discrimination in the selection, appointment and promotion of persons employed in the child justice system shall be avoided in order to achieve impartiality in the administration of the child justice system.\textsuperscript{Section 206.}
\end{itemize}

**Sentencing a child to death** is expressly prohibited in some countries.\textsuperscript{478} In Myanmar, the provisions also extend to life imprisonment and whipping.\textsuperscript{479} Parole provisions are expressed by Jamaica\textsuperscript{480} the right to bail by Ireland,\textsuperscript{481} Jamaica,\textsuperscript{482} Lesotho,\textsuperscript{483} Malaysia,\textsuperscript{484} New Zealand,\textsuperscript{485} Singapore,\textsuperscript{486} and Uganda\textsuperscript{487} and the right to be kept in separate facilities from adults by Azerbaijan,\textsuperscript{488} Brazil,\textsuperscript{489} Jamaica,\textsuperscript{490} Lesotho,\textsuperscript{491} Myanmar,\textsuperscript{492} Nepal,\textsuperscript{493} Trinidad and Tobago,\textsuperscript{494} Singapore\textsuperscript{495} and Uganda.\textsuperscript{496}

\textsuperscript{476} Sections 322 and 99 (2) respectively.
\textsuperscript{477} Articles 126 and 76 respectively.
\textsuperscript{478} Example, Belarus (a.4), Jamaica (s.78), Lithuania (a.51 (3), Malaysia (s.97(1), Myanmar (s.45), Nigeria (s.221 (c), Trinidad and Tobago (s. 14 of Second Schedule (Part C) to Act No. 68 of 2000) and Uzbekistan (a.11 (e)).
\textsuperscript{479} Section 45.
\textsuperscript{480} Section 78
\textsuperscript{481} Section 68 of PART 6.
\textsuperscript{482} Section 67
\textsuperscript{483} Section 135.
\textsuperscript{484} Section 84
\textsuperscript{485} Section 240.
\textsuperscript{486} Section 30 of PART III.
\textsuperscript{487} Section 90.
\textsuperscript{488} Article 42.
\textsuperscript{489} Article 185.
\textsuperscript{490} Section 185.
\textsuperscript{491} Section 66.
Additionally, Nigeria makes special provisions with respect to expectant mothers, providing that they cannot be subjected to the death penalty and where a term of imprisonment is imposed, detention at a *Special Mothers Centre* is to be prescribed.\(^{497}\)

Resort to non-institutional measures is expressly provided for in some statutes in line with international standards. While Myanmar stipulates non-institutional measures to be adopted by the court in matters which are not of a serious nature, in Brazil,\(^{498}\) Estonia, Ireland, Tunisia\(^{499}\) and Uganda,\(^{500}\) non-institutional orders are also to be considered as priority measures in respect to a child found guilty of any offence. In Uganda the range covers conditional discharge, payment of fines/costs, order that the parent or guardian be bound over, compensation, an order of parental supervision,\(^{501}\) community sanctions,\(^{502}\) and order of assignment to a *mentor*.\(^{503}\)

**Box 3.14.3.4: Estonia, Goa and Turkmenistan on the use of custodial sentencing as measure of last resort.**

<table>
<thead>
<tr>
<th>Country</th>
<th>Article/Cause</th>
</tr>
</thead>
<tbody>
<tr>
<td>Estonia: 34 (2)</td>
<td>If a child who has committed a criminal offence is punished, criminal punishment, particularly imprisonment, shall be used only as a measure of last resort and is to be avoided. (3) In the case of a child who has committed a criminal offence, measures such as counselling, probation, reconciliation, curatorship and educational programmes for the prevent of legal offences shall be first applied.</td>
</tr>
<tr>
<td>Goa: 32 (1) (k)</td>
<td>Institutionalisation of a child will be the last resort after reasonable enquiry and that too for the minimum duration.</td>
</tr>
<tr>
<td>Turkmenistan: 33(2)</td>
<td>Rehabilitation of the children aimed at the child’s return to normal way of life is a compulsory condition of their custody in a special institution. The child who is kept in a special institution shall have the right to human treatment, healthcare, general and professional education, to contact with his or her family, relatives and other people through visits and correspondence.</td>
</tr>
</tbody>
</table>

Novel provisions are provided by the Goa on the application of words and terminologies to avoid stigmatization of the juvenile. Under section 32 (e) of the Act, “non-stigmatizing semantics must be strictly adhered to, and the use of adversarial or accusatory words, such as, arrest, remand, accused, charge sheet, trial, prosecution, warrant, summons, conviction, inmate, delinquent, neglected, custody, etc., are prohibited”. Similarly, in the statutes of Singapore\(^{504}\) and Uganda\(^{505}\), the words “conviction” and “sentence” shall not be used in reference to a child appearing before a family and children’s court and instead, the words, “proof of an offence against a child” and “order” shall be substituted. Some laws expressly

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\(^{491}\) Section 36(5).
\(^{492}\) Section 37 (b).
\(^{493}\) Section 15.
\(^{494}\) Section 15 of Second Schedule (Part C) to Act No. 68 of 2000.
\(^{495}\) Section 29 of PART III.
\(^{496}\) Section 94(6).
\(^{497}\) Section 221 (3)-(7).
\(^{498}\) Articles 115-119.
\(^{499}\) Article 73.
\(^{500}\) Section 94(4).
\(^{501}\) Section 117 of PART 7.
\(^{502}\) Section 131 of PART 7.
\(^{503}\) Section 41 of PART III.
\(^{504}\) Section 41 of PART III.
\(^{505}\) Section 101.
prohibit handcuffing and tying of hands of a juvenile (e.g. Myanmar,\textsuperscript{506} Nepal\textsuperscript{507} ) or solitary confinement (Nepal).\textsuperscript{508}

Provisions also exist for the protection of the child who has been placed in either police or institutional custody.\textsuperscript{509} They include guaranteed access to parents, nutritious food and medical assistance, separation from adults, respect for dignity and participation. In all cases, the ultimate goal of detention should be reformative as opposed to punitive. Under the Brazilian code, for instance, a youth under the age of 18 years is to be released to a parent or responsible adult. Deprivation of liberty should be limited to serious cases in which the youth’s safety or the public order requires it.

**Box 3.14.3.5: Provisions of Belarus, Mali and Tunisia on the purpose of institutionalisation of a child in conflict with the law.**

| **Belarus** | The obligatory purpose of keeping of under aged in special educational or medical educational establishments is their re-education and return to normal conditions of life and work-\textbf{Article 36}. |
| **Mali and Tunisia** | A child placed in an educational institution of protection, rehabilitation or place of detention, is entitled to the protection, physical and moral. He/she will also be entitled to social assistance, including health and educational, taking due account of his/her age, sex, potentialities and personality-\textbf{Articles 14 and 15}, respectively. |

In most of these countries, children in conflict with the law are also protected from media exposure or attacks on privacy and in all cases, the media are not allowed access to judicial proceedings unless the court issues a formal order, violation of which often results in a criminal conviction (example, see Ireland\textsuperscript{510} Malaysia\textsuperscript{511} Mali\textsuperscript{512} Singapore\textsuperscript{513} Tunisia\textsuperscript{514} and Uganda\textsuperscript{515} ).

**Quasi-Judicial systems in juvenile justice administration**

In recognition of the need to create opportunities for juveniles to be diverted from the criminal justice system, countries such as Ghana\textsuperscript{516}, Lesotho\textsuperscript{517} and Uganda\textsuperscript{518} have made provisions for quasi-judicial systems of adjudication with the object of mediating in minor criminal and civil matters affecting the child. Within the context of juvenile justice administration, its purpose is to assist in victim-offender mediation with a view to diverting the child from the criminal justice system. In Ghana and Uganda community-based panels

\textsuperscript{506} Section 37 (a).
\textsuperscript{507} Section 15.
\textsuperscript{508} Ibid.
\textsuperscript{509} Examples include Belarus (a.36), Brazil (a.174), Ecuador (a.56), Indonesia (a.17), Lithuania (aa. 53-54), Nigeria, Tunisia (a.15), Uganda (Part 10) and Uzbekistan (a.53).
\textsuperscript{510} Section 51 of PART 4.
\textsuperscript{511} Section 15.
\textsuperscript{512} Article 162. This covers proceedings \textit{in camera}.
\textsuperscript{513} Section 35 of PART III.
\textsuperscript{514} Article 120.
\textsuperscript{515} Section 102.
\textsuperscript{516} Sub Part I of PART II.
\textsuperscript{517} Section 125, Village Child Justice Committees.
\textsuperscript{518} Section 92.
have been established to deal with such cases and are generally composed of social workers and community members.

### 3.14.3.6: Provisions from Uganda on a community-based child panel

**Uganda:**

A village executive committee is considered the court of first instance in respect of specific criminal cases affecting children. It has the mandate to make an order for any of the following relief’s in respect of a child against whom an offence has been proved: (a) reconciliation (b) Compensation (c) Restitution (d) Apology (e) Caution. - Section 92(4).

### Corporal punishment

Protection of the child from corporal punishment is expressed in different ways. Whereas it is expressly banned in some countries, it is permitted under specified circumstances. A comparative overview of the provisions of the Gambia, Ghana, Nepal, Sierra Leone and Malaysia are set out in Box 2.8.11:

**Box 3.14.3.7: Provisions on corporal punishment, case studies from Gambia, Ghana, Jersey, Lesotho, Nepal, Sierra Leone and Malaysia**

**In Gambia,** parents are to ensure that domestic discipline is administered with humanity and in a manner consistent with the inherent dignity of the child—Section 22 (1) (c)

Provisions in the Ghana and Lesotho statutes state that no correction of a child is justifiable which is unreasonable in kind or in degree according to the age, physical and mental condition of the child and no correction is justifiable if the child by reasons of tender age or otherwise is incapable of understanding the purpose of the correction.

Under the law of Jersey, any defence of reasonable corporal punishment of a child shall only be available to a person who was at the time of the punishment—(a) a person with parental responsibility for the child; or (b) a person without parental responsibility for the child who—(i) is the father or relative of the child; (ii) had care of the child; and (iii) had the consent of a person with parental responsibility for the child to administer such punishment. (2) Any defence of reasonable corporal punishment of a child shall not be available if the punishment involved any means other than the use of a hand—Section 79.

**In Nepal,** the act of scolding and minor beating of the child by his father, mother, and member of the family, guardian or teacher for the interests of the child himself shall not be deemed unlawful—Section 7(2).

**In Malaysia,** whipping is allowed as a judicial option in offences committed by juveniles. A court may order the child, if male, to be whipped with not more than ten strokes of a light cane within the court premises and in the presence (if he desires) of the parent or guardian. Whipping can be executed only upon the child being declared to be medically fit by a medical officer. A light cane and average force is to be used to ensure that the child’s skin is not cut. The face, head, stomach, chest or private parts of the child cannot be touched. The child must be fully clad for the process. The whipping must stop if during execution the medical officer certifies that the child is not in a fit state of health to undergo continuation—Sections 91-92.

### 3.14.4 Children in situations of exploitation, including physical and psychological recovery and social reintegration (Articles 32, 33, 34, 35, 36 and 39)

Provisions on different forms of exploitation, violence, abuse and neglect exist under a substantial number of statutes, with provisions tending to respond to the Optional Protocol to

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519 Example, Estonia (s.31), Goa (s. 4 (12) with specific reference to educational settings), Iceland (a.82), Lithuania (a.49), Nigeria (s.221 (1) (b)), Turkmenistan (a.24(3)), and Uganda (s.94 (9)).

520 Section 13 (2).

521 Section 15(2).
the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. For example, express prohibitions on sexual exploitation are provided by some statutes,522 with that of Mali prohibiting sexual harassment in the workplace as well as in the school environment.523 The statute of the Goa additionally proscribes commercial sex exploitation, barring children from hotels or other similar facilities unless registered with a person related by blood. It further mandates the State to design a Child Friendly Tourism Code524 and to appoint “under cover agents to pose as prospective clients for child prostitutes or as employers of child labour”525 with a view to arresting perpetrators.

Some make express reference to economic exploitation in general526 and more specifically to trafficking and abduction.527 In the case of South Africa, the provisions of the UN Protocol to Prevent Trafficking in Persons have been expressly and fully adopted.528 However, in some countries, loopholes need to be tightened with respect to the definition of trafficking. For instance under the law of Singapore, “it is a legal defence to state that the transfer took place in contemplation or pursuant to a bona fide marriage or adoption and that at least one of the natural parents of the child consented to it.” In this case, the marriage of a young woman below the age of 18 years can proceed provided the previous consent of the legal guardian was sought.529

The domestication of ILO Conventions 138 and 182 has also found expression in a substantial number of statutes. The Goa’s statute requires the formulation of a comprehensive plan of action to eradicate all forms of child labour within a period of two years from the commencement of the statute. The plan is to include schemes for the identification, release and rehabilitation of child labourers, their education and integration into society.530 The statute of Jersey confers powers on the relevant Ministry to “make Orders with respect generally to the employment of children, and any such Order may distinguish between children of different ages and sexes and between different trades, occupations and circumstances.”531

With respect to children who are legally qualified to work, some countries have made provision for the legal rights of both child apprentices and child workers (e.g. Brazil, Gambia, Ghana Ecuador). These include the regulation of hours of work, remuneration, safety, social security and contractual agreements. More detailed examples of State provisions in relation to various forms of child work are provided in box 2.8.12 below.

522 Example, Bulgaria (a.11(3), Ecuador (a.68), Haiti (a.96), Kazakhstan (a.40), Lithuania (a.47), Mali (a.57), Singapore (s.7 of PART 2) and Tunisia (a.20).
523 Articles 32 and 33.
524 Section 8.
525 Section 8(23).
526 Example, Gambia (ss. 41-49), Ghana (s.), Jamaica (s ), Latvia (a.15), Mali (a. 63), Romania (a.87), Sierra Leone (s.31) and Tunisia (a.26).
527 Example, Gambia (ss. 39-40 (includes slave dealing)), Goa (s. 7 (9), Iceland (a.97), Jersey (s.44), Kyrgyzstan (a.24), Lesotho (Part 8), Nigeria (s 27), Malaysia (Part 8), Mexico (a. 21 (b)), Romania (a. 98), Singapore (s. 2 of Part 2), South Africa (Chapter 18), Turkmenistan (a. 34) and Uzbekistan (a .43).
528 Ibid.
529 Sections 12 and 15 of PART II.
530 Section 7(7). See a similar intervention with respect to Ecuador (article 83).
531 Section 48(1).
Box 3.14.4.1: Domestication of ILO Conventions 138 and 182

The following types of work are prohibited under State laws:

**Exploitative labour:** Defined in Gambia, Ghana, Lesotho, Lithuania and Sierra Leone as work which deprives the child of his or her health, education or development. Though not defined, it is also prohibited in Nigeria and Turkmenistan.

**Night work:** Defined in Brazil and Jamaica as work between the hours of ten o’clock in the evening and five o’clock in the morning. In Gambia, Ghana and Sierra Leone as work between the hours of eight o’clock in the evening and six o’clock in the morning. In Haiti, Lesotho and Nepal, it is defined as work between the hours of six o’clock in the evening to six o’clock in the morning. In Uzbekistan, children below 18 years cannot be employed for night time, overtime and weekend work.

**Light work:** Defined in Gambia, Ghana and Sierra Leone as work which is not likely to be harmful to the health or development of the child and does not affect the child’s attendance at school or the capacity of the child to benefit from school work. However, whereas in the age limit for this is 16 years in Gambia, in Ghana and Sierra Leone it is stipulated at 13 years. It is also prohibited but not defined in other countries such as Latvia. Another version of this type of work is described as easy work under the law of Uzbekistan. Under the provision, children below the minimum age of employment (16 years), but not below 14 years can be engaged in work that is compatible with their educational programme. This is permitted to prepare them for future employment as adults. Additionally work with education programmes is permissible for children below the age of 18 years.

**Domestic work:** Ecuador, Goa and Nigeria have outlawed the domestic employment of children. However, under the law of Haiti, domestic employment of children who have reached the age of employment is permissible provided they are remunerated.

**Hazardous work:** Defined in Gambia, Ghana, Haiti, Lesotho and Sierra Leone as work which poses a danger to the health, safety or morals of a child. It includes going to sea, mining, quarrying, carrying of heavy loads, work in manufacturing industries where chemicals are produced or used, work in places where machines are used, work in places such as bars, hotels and places of entertainment where a child may be exposed to immoral behaviour. In Belarus and Uzbekistan, it also includes work in the underground. This form of work is also banned in Haiti, Kazakhstan, Nepal, Turkmenistan and Uzbekistan. The provisions of Azerbaijan, Lithuania, Turkmenistan and Latvia include work related to the production of and sale of tobacco and alcohol products. Additionally, the recruitment of school children during the academic year to agriculture and other work not related to the learning process is prohibited. The laws of Ecuador and Haiti include many of the above in addition to the involvement of children in the production of explosives and toxic material.

**Forced, compulsory labour, slavery and similar practices:** are prohibited in Haiti and Uzbekistan.

In Gambia, Ghana, Lesotho and Sierra Leone an employer of an industrial (formal or informal sector) undertaking is required to keep a register of all employed children including information on their ages or date of births.

An estimated sixteen other forms of criminalisation of actions, tantamount to abuse and exploitation can also be identified. These are listed below.

1. Mental exploitation, 532
2. Admission of children to night clubs, 533
3. Exposure to harmful entertainment,
4. Sale of liquor and tobacco to children, 534
9. Gambling, 539
10. Offering of child for spiritual purposes, 540
11. Sale of children or child body parts 541

532 Example, Latvia (a. 15(2), Lithuania (a. 43 (2) and Thailand (s 26 (6)).
533 Example, Jamaica, s. 39.
5. Begging,
6. Exposure to narcotics,
7. Protection from the harmful effects of the internet and abuse of internet cafes,
8. Violent media exposure,
9. Pornography
10. Seduction
11. Scientific experimentation
12. Failure to provide reasonable supervision to a child
13. Protection against forcible involvement in political, religious and trade union activities

In the Goa, fines and penalties imposed for abridgement of provisions on violence, abuse and exploitation are to be credited to a State Children’s Fund to be used for implementing the objects of the law. Iceland has provisions in relation to children’s curfews. Under article 92, “children aged 12 and under may not be out of doors after 20:00 unless accompanied by an adult. Children aged 13 to 16 may not be out of doors after 22:00, unless on their way home from a recognised event organised by a school, sports organisation or youth club. During the period 1 May to 1 September, children may be out of doors for two hours longer”.

Box 3.14.4.2: provisions of Malaysia on leaving a child without reasonable supervision

<table>
<thead>
<tr>
<th>Box 3.14.4.2: provisions of Malaysia on leaving a child without reasonable supervision</th>
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</thead>
</table>
| Any person who, being a parent or a guardian or a person for the time being having the care of a child, leaves that child-
| 1) Without making reasonable provision for the supervision and care of the child;
| 2) For a period which is unreasonable having regard to all the circumstances; or
| 3) Under conditions which are unreasonable having regard to all the circumstances,
| Commits an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding two years or both- Section 33.

Some countries have provisions for social reinsertion and rehabilitation of children affected by abuse and violence. Rehabilitation interventions for children affected by illegal use of alcoholic beverages, narcotics, and other forms of violence cover medical and psychological

534 Example, Azerbaijan (a.9), Ecuador (a.70), Belarus (a. 70), Haiti (a.67), Jamaica (s. 40), Kazakhstan, (a. 37), Latvia (s. 48), Lithuania (a.44), Nepal (s. 16(4)), Pakistan (Part 1. S.8), Thailand (s. 26 (10) and Uzbekistan (a. 28).
535 Example, Azerbaijan (a. 28), Jamaica (s. 41), Malaysia (s.32), Mali (a. 58), Nepal (s.13), Pakistan (s.7 of Part 1), Thailand (s. 26 (5), Tunisia (a.20).
536 Example, Azerbaijan (a. 28), Belarus (a.9), Estonia (a.49), Iceland (a. 99), Kazakhstan (a. 37), Latvia (s.49), Lesotho (s. 17), Lithuania (a. 45), Nigeria (s.25), Mexico (a. 21(b)), Nepal (s. 16(4)), Pakistan (s.8 of Part 1), Romania (a. 88), Turkmenistan (a.28) and Uzbekistan (a.29).
537 Example, Goa (s 13 (16)
538 Example, Azerbaijan (a.11), Brazil (aa.240-244), Ecuador (a. 52 (3)), Iceland (a. 93), Kazakhstan (a.36),Latvia (a.50), Lithuania (a.46) and Thailand (s. 27).
539 Example, Belarus (a.9), Ecuador (a. 78(5)), Goa (s.13 (21)), Pakistan (s.10 of Part 1) and Thailand (a. 26 (8).
540 Example Nepal (s. 14).  
541 Example, Azerbaijan (a.11), Brazil (a.238-239), Ecuador (a. 70), Goa (a. ), Indonesia (a. 47), Pakistan (s.23 of Part 1).
542 Example, Belarus (a.12), Bulgaria (a. 11(3)), Ecuador (a. 52(1), Estonia (a. 50), Haiti (a. 96), Iceland (a. 93), Kazakhstan (a.12), Latvia (s. 50(4)), Lithuania (a. 46), Mali (a.57), Tunisia (a. 20), Turkmenistan (as. 29 & 34), Uzbekistan (a. 37) and Thailand (a. 37).
543 See Latvia (a. 15(2)).  
544 See Lithuania (a. 7(2).
545 See Ghana, Malaysia (s. 33) and Mali (a. 59).
546 See Bulgaria (a. 11 (4)).
547 Section 13.
548 Example, Ecuador (a.79), Haiti (a.68), Indonesia (a.59), Latvia ( ), Lithuania (a.43(3)), Kenya (s13(1)) and Uzbekistan.
treatments which aim at restoring the health, self esteem and dignity of the child. Under Haiti’s law, special rehabilitation centres are specifically created to address these problems.

**Box 3.14.4.3: Demonstration from Nigeria on child friendly proceedings**

No person shall publish the name, address, school, photograph, or anything likely to lead to the identification of a child whose matter is before the Court, except in so far as is required by the provisions of this Act.-Section 157 (1).

The proceedings in the Court shall be conducive to the best interest of the child and shall be conducted in an atmosphere of understanding, allowing the child to express himself and participate in the proceedings. - Section 158.

The importance of dealing with the psychological recovery of the child who has been affected by an abusive situation is yet to be fully recognised particularly in developing countries. Provisions in statutes of some countries, however, demonstrate an increase in appreciation of this type of intervention. Jamaica, for example has provided for counselling, medical examinations and for video recordings and in camera proceedings for child witnesses. The Goa’s statute provides for Victim Assistance Units to address issues of trauma and to prepare the child for court proceedings, specialised training for police personnel, the introduction of child rights into the Police Training School curriculum and special procedures and methods for cross examination of child witnesses. The provisions of the statute of Latvia as shown in box 2.8.15 below also serve as a model for interventions in place for children affected by violence.

**Box 3.14.4.4: Provisions of the law of Latvia on the treatment of child victims of abuse**

Special institutions or sections in general medical institutions shall be established and special resources allocated in the State budget for the medical treatment and rehabilitation of a child who has suffered as a result of violence. Expenditures for the medical treatment and rehabilitation of the child shall be covered by the State and shall be collected from the persons at fault by subrogation procedures.

Special medical treatment shall be provided for a child who has become ill with a sexually transmitted disease. The adults at fault for the illness of the child shall be held liable as prescribed by law and the costs of the medical treatment shall be collected from them.

It is prohibited for a child who has been a victim of violence (illegal act):

- to be left alone, except in cases when the child himself or herself so wishes and this choice is considered appropriate by a psychologist who has undergone special preparation for work with children who have suffered from violence;

- to be left without psychological or other form of care;

- to be confronted by the possible perpetrator of the violence (illegal act) while the child is not sufficiently psychologically prepared for such a confrontation; or

- to be subjected to the use of any compulsory measures in order to obtain information or for any other purpose.

Extra-familial care shall be provided without delay for a child who has suffered from violence (illegal act) in his or her family or for whom a real threat of violence exists, if it is not possible to isolate the persons at fault from the child.

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549 Section 13 (2) (f).
550 Section 21. This includes offenders against children and could cover an investigation into communicable diseases. Such information is to be treated as confidential and the examination will be done on condition of being in the best interests of the child. Section 22. For similar interventions see the provisions of Ecuador (article 80).
551 Sections 19 ad 43.
552 Section 8(19).
553 See section 8 (20).
554 Section 32 (n).
3.14.5 Children belonging to a minority or an indigenous group (Article 30)

Express provisions which seek to afford protection to child minority or indigenous groups are rare and scattered throughout some statutes. It can, however, be argued that they are potentially covered where provisions on non-discrimination are adequate. At this stage, Indonesia, Lithuania and New Zealand may be identified as having the most detailed provisions. The Indonesian provisions could serve as a model in view of the fact that they cover a wide range of issues.

Box 3.14.5: Model provisions of Indonesia on the protection of child minorities and indigenous groups.

65 (1) The special protection to be afforded to children from minority and isolated groups as referred to in Article 59 hereof shall cover the provision of infrastructure and facilities so that such children may enjoy their own culture, practice their own religion and speak their own language. (2) All persons shall be prohibited from preventing children as referred to in Section (1) above from enjoying their own culture, practicing their own religion and speaking their own language subject to the need for access to social and cultural development.

Under the law of New Zealand, a court, in considering action to be taken in relation to a child in need of special care and protection, can take into account *cultural and community reports* which provide more information on the heritage, ethnic, cultural or community ties and values of the child or young person or their families, *whanau* or family group.555 Lithuania provides for equal protection for children belonging to minority or indigenous groups which further guarantees their rights to practice their own language, culture, customs and traditions.556

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555 See section 187.
556 Article 17.
Part IV: Important Lessons and the Way Forward

4.1 Lessons Learned

The study has unearthed the following lessons:

1. Legal traditions are key determinants of the potential adoption of a consolidated statute by a State Party to the CRC. In the context of consolidated statutes, the monist approach of civil law countries provides a more conducive framework for effective and timely integration of the CRC into domestic legislation, including the enactment of single consolidated legislation. The study, however, finds variations of both monist and dualist approaches among Shari’a countries on the mode of integration of the CRC into domestic law. Whereas countries such as Bahrain have a leaning towards the dualist approach, others such as Algeria have a tendency to be more monist. Opportunities are presented by the Arab Charter on the Rights of the Child for the majority of Shari’a countries to adopt and endorse the rights-based approach to law reform. However the limited referencing of the Charter in State Party reports as well as in other legal texts is an indication that this regional instrument is not being fully exploited. The tradition under the common law system is to focus more on judicial precedent rather than codification, and the strict dualist approach tends to prolong the enactment process. However, the cases of the United Kingdom, Jersey and some parts of Canada demonstrate the feasibility of codification under this system of law. Among countries of mixed legal systems, opportunities are also presented for the enactment of consolidated laws based on the comparatively detailed constitutional provisions on children’s rights.

2. Despite these obstacles, the enactment of consolidated statutes is fast becoming a legislative strategy across State parties to the CRC. The fact that an estimated number of 69 States in addition to three federal states and one Crown Colony have enacted such consolidated laws with an additional 31 States expected to undergo similar reforms based on an express recommendation by the Committee, represents a significant milestone in global legislative efforts. This underscores a growing perception not only by the Committee but also among States that consolidated laws potentially reflect the very nature of the CRC as a holistic and integrated instrument and that by enacting such laws, the principles of the CRC and synergies between its various articles are reinforced.

3. Consolidated Statutes are, however, not to be regarded as fanciful or fashionable tools for implementing of the CRC. A review of the Committee’s Concluding Observations indicates that all State consolidated statutes remain under its close scrutiny, using the principles and provisions of the CRC as a basis for determining compatibility. Consolidated laws must be regarded as an integral part of the obligation of States to adopt a rights-based approach in the implementation of the CRC. This means that laws should serve as catalysts and reference points for policy development, institutional reforms and resource allocation for the effective fulfilment of the rights of the child.
4. Consolidated statutes offer an opportunity for holistic costing of services and activities in relation to children and therefore implementation of the CRC at the domestic level. Their existence pave the way for children’s rights to be integrated into national policy and economic frameworks such as Poverty Reduction Strategies and UN Development Assistance Frameworks and therefore serve as channels for keeping the rights of children high on national agendas with a view to holding governments accountable to children.

5. Opportunities are presented to enhance donor co-ordination and harmonisation of development assistance to children in the light of the more holistic legal framework that consolidated laws present. This will foster international development assistance for implementation of the CRC in line with current trends which demonstrates a shift to harmonious approaches to aid flow as opposed to fragmented and piecemeal methods. This is given poignant expression in the Paris Declaration on Aid Effectiveness of 2005 which aims at ensuring that aid flows to a given country are aligned with national priorities through co-ordinated systems. Child related concerns risk limited funding where the legal base protecting them is outmoded, scattered and fragmented. Consolidated laws however offer opportunities for all aspects of children’s rights to be met, including child protection, which has attracted the least attention compared to other sectors such as education and health.

6. Consolidated enactment processes provide opportunities for States to review their commitments and obligations under other treaties. The Committee has consistently encouraged States to ratify other instruments such as CEDAW and ILO Conventions 138 (the Minimum Age Convention, 1973) and 182 (on Worst Forms of Child Labour, 1999) and to observe other standards, General Comments and Observations issued by itself and other human rights treaty bodies. While the challenge would be to ensure that all these standards are reflected in national legislation, the enactment of a single statute enhances its feasibility.

7. Given their potential for comprehensiveness (embracing all the principles and provisions of the CRC), statutes also serve as opportunities for implementing and monitoring State obligations under development frameworks such as the Millennium Development Goals and the World Summit for Children.

8. The overall contents of consolidated laws, however, present the following strengths and weaknesses:

**Strengths**

– Evidence of a general appreciation and integration of elements of rights based approaches to legal reforms in favour of children is a significant milestone in child-related legal reforms across States. The ways in which this has been expressed includes the repositioning of children as subjects of rights, the identification of the State, community and parents as duty bearers towards children, and express mention of the CRC and other human rights standards (the ACRWC, for example). In some cases, States have expressed higher standards.

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557 Paris Declaration on Aid Effectiveness, Ownership, Harmonisation, Alignment, Results and Mutual Accountability, Paris, 2005. See indicators in Chapter 3.
compared to the CRC under the principles of the best interests of the child and of non-discrimination. In regard to non-discrimination, some States have cited that it would be the paramount or superior consideration in matters affecting children, while others have abolished discrimination against children on the basis of the marital circumstances of their parents.

- In support of State responsibility, some statutes provide further guidelines on service delivery within the framework of their respective federal or decentralised systems of government. Under this heading, due recognition has also been given to the importance of resource allocation, effective co-ordination and integration of services.

- The study has documented an increase in the appreciation of the complementary rights of women and children and therefore the interdependent roles of CEDAW and the CRC in achieving comprehensiveness. This has been noticeable in the areas of health, where States have made provisions on maternal health. Other measures have been taken with respect to the protection of pregnant children, special provisions on non-discrimination and special classification of girls in some statutes as a special group in need of special care and protection.

- There is growing evidence to support the importance of setting up special adjudicative bodies for children and the provision of legal aid as a means of securing access to justice and due process, given their vulnerability compared to other segments of the population. The different child-related courts and provisions that aim to ensure that children are not intimidated during the administration of justice are a testimony to this observation. Alternate forms of dispute resolution emerging in some jurisdictions is also to be regarded as an ingenious method of bringing justice to the door steps of children.

- An estimated number of 15 statutes listed in the study contain provisions on the involvement of children in armed conflict. This shows a gradual but growing number of States which have taken legal measures with respect to the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict.

- Legislative provisions which encourage States to maintain accurate data on records on the situation of children in special circumstances will facilitate monitoring the situation of children. Therefore, countries which have made provisions for the creation of specific registers (for example, the adoption of registers and employment registers) can be said to be paving the way for providing legal basis for a mandatory system of data collection on specific groups of children and is expected to inform implementing partners of the progress being made with implementation.

- Provisions which reinforce the family as the first line of protection and institutional care as a measure of last resort are also to be regarded as a major break with the traditional notion which placed institutional care at the heart of child protection interventions. This is coupled with higher standards applied to inter-country adoptions by a great number of States Parties.

- The fact that States have also afforded protection to children against varied forms of abuse, neglect, exploitation and violence is also a significant observation. Many provisions are line with the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography, the ILO Conventions 138 and 182 and the 2000 Palermo Protocol on human trafficking. It is also important to note that States have set different minimum ages for different types
of employment and apprenticeships based on their particular economic and social circumstances.

— Wide acceptance of the importance of providing adequate protection to children with disabilities, with special attention paid to prevention and early detection, and the ultimate objective of ensuring that the child is integrated into society and given an opportunity to lead an independent life is to be appreciated as being in line with the CRC principles and provisions and therefore a sign that States are taking steps to adopt rights based approaches as opposed to charitable approaches to protect the rights of such children.

— Countries which distinguish between children and young persons can be said to have introduced a life cycle approach to legislative reforms in an effort to ensure that specific actions are taken with respect to specific groups of children in line with their stage of development. This tends to be the case among Latin American countries that define their target group as children and adolescents and designate their statutes to reflect this scope.

— New dimensions on the “economic rights” of children consisting of their right to work under safe and fair conditions, the right to join trade unions, their right to inherit, own and manage property based on their capacity and capabilities are innovative provisions. This should be appreciated in the light of the emergence of households managed by children due to factors such as the HIV/AIDS pandemic.

— Country provisions which include human rights education and gender in the curriculum of school education also falling in line with CEDAW and the CRC are also to be commended because by these standards, States can provide children with a legal opportunity not only to become knowledgeable of their rights but also to become gender aware.

— In many countries, the issues of education and health have traditionally held prominent positions in policy and planning in favour of children. However, the increasing recognition by States of the vulnerable situation of children in need of special care and protection is a positive sign of acknowledgement of the place and importance of child protection in the overall scheme of implementing the CRC and therefore offers an opportunity for raising the profile of such concerns in the agenda of countries.

— Major strides have also been achieved in the area of juvenile justice administration. Provisions on due process, diversion and quasi-judicial systems of justice are innovations which must be further studied and replicated.

**Weaknesses**

— In the area of parental responsibility, gender discriminatory provisions exist in some statutes. For example, some statutes provide that, in cases where the parents of the child were not married at the time of birth, fathers although still liable for maintenance, would have to obtain a formal judicial order before they can be deemed to be responsible for the child. Such legislative provisions are however in conflict with the provisions of CRC, CEDAW and the UNDHR all of which call for joint parental responsibility and equality of parental rights.
Similarly, the existing *patrilineal principles* prevailing in some statutes which make it possible for only the father to name a child and the mother in some instances (e.g. Nepal) are equally contrary to international law.

Discrepancies between some State provisions on the age of admission into the armed forces and their respective Declarations made on the subject must be addressed to reflect consistency with the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict.

Based on the fact that the age of majority can be attained earlier than 18 years in some countries, the *definition of the child* in the statutes of some countries is an area which needs to be examined further. Action is to be taken to review article 1 of the CRC, which also defines the child as *every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier*. On the basis of this provision situations have arisen in which children are permitted to marry before the age of 18 years. Pending such a review, States are to read CRC provisions in tandem with those of CEDAW and the Convention on Consent to Marriage, Minimum age for Marriage and Registration of Marriages.

In some countries, the *age of criminal responsibility* is set too low, implying that children would be exposed to the criminal justice system at too young an age and therefore would not have their best interests served. These provisions do not reflect the principles and provisions of the CRC in addition to other standards such as the UN Minimum Rules for the Administration of Juvenile Justice (“Beijing Rules”).

Steps taken by some countries to proscribe torture and inhuman and degrading treatment and punishment have been negated by other provisions which permit corporal punishment under specific circumstances. This has resulted in a situation in which physical abuse remains *a de jure* and *de facto* situation.

A review of the concluding observations made by the Committee with respect to existing statutes demonstrates that some States must revisit their codes in order to ensure consistency with the CRC. The full details of these are outlined in Appendix 3.

### 4.2 The challenges ahead

1. Discussions on the various legal traditions in relation to consolidated statutes show that in some cases, as noted among some Shari’a States, constitutional provisions on the status of international law can potentially negate the initial effort by a State Party to embark upon this type of reform process. Countries of plural legal systems also face legal barriers with respect to the codification of customary norms that are inimical to the wellbeing of women and children. This challenge is felt especially against the background of the multi-ethnic dimension of States where the challenge of reviewing outmoded colonial laws which have been in existence in some cases since prior to independence remains.

2. In recognition that the rights-based approach consists of *a holistic package* of requirements needed for the implementation of the CRC, States are confronted with the challenge of ensuring that consolidated reforms are accompanied by policy reforms, institutional development, effective co-ordination, data collection, training, dissemination and appropriate budgetary allocation.
3. The experience of some States demonstrates the tendency for reforms to delay due to a number of factors: Political stability is for instance key to the success of reforms. While the Committee has regarded the enactment of children’s statutes as a cost-effective and efficient means of achieving legislative reforms in favour of children, it recognises that the political circumstances of a State could potentially negate or delay this effort. In the case of Haiti, for example, even though the draft legislation was submitted by a parliamentary commission in 1998, the passage of the code was delayed due to the late involvement of civil society and the absence of a functioning Parliament. In Jordan, a backlog of draft legislation before the National Assembly resulted in a slow approval rate for new Acts, including those affecting children. Lack of early consensus among religious and customary leaders, in addition to the transition from military to civilian rule occasioned the enactment of its legislation over a ten year period in Nigeria.

4. In some countries, the position of the family as the primary duty bearer of the child (as reinforced under a considerable number of statutes) is being threatened by various economic and social trends. The Committee has expressed concern about the difficulties experienced by single parents, in particular single mothers, with regard to the enforcement of child maintenance payment orders and at the growing number of child-headed households, linked to the spread of HIV/AIDS. The latter is also hampering the development of a sustainable workforce to ensure sustained service delivery to children. There is also the risk of stigmatization affecting access to social services.

5. Federal states potentially encounter a number of difficulties in relation to the enactment and implementation of law. Some of these include:

   – Disparities between the different states' legislation and practices, including budgetary allocations.
   – Insufficient coordination between the central level and federated states.
   – Insufficient attention paid to systematic, comprehensive and disaggregated qualitative and quantitative data collection at the national, state and local levels, and to the identification of appropriate indicators and mechanisms to evaluate the progress and the impact of policies and measures adopted for all areas covered by the Convention.
   – Delegation of responsibility without adequate resource allocation resulting in deficiencies in the provision of services for children, especially in poorer areas.

4.3 Recommended future actions

The following recommendations are made based on the above situational analysis:

1. State parties to follow up on Committee recommendations

558 IR:Haiti.21/06/2002.crc/c/51/Add.7 Para.12
559 Third State Party report: Jordan. 02/03/2006.CRC/C/JOR/3.Para.15
560 CO:Lesotho. 21/02/2001.CRC/C/15/Add.147. Paras. 8&35.
States Parties which have yet to comply with recommendations to enact consolidated statutes in addition to the short-comings in laws which have been passed are to do so with financial and technical support from UNICEF and other agencies. A database in this regard should be set up to assist with the monitoring of State progress and where necessary stakeholders should be given an opportunity to accelerate action through such means as advocacy and sensitization.

2. The Committee to clarify the scope of General Comment 5

While many States Parties have engaged in the process of reforms leading to the enactment of children’s statutes, the study has unearthed varying degrees of “consolidation” among State parties. The Committee has correctly adopted a case by case approach to legislative reform; however, there is need for further guidance from it on standards which would ensure a higher level of uniformity in content of these statues. Based on the findings of the study, it would be desirable for the Committee to express a more concrete opinion on the rights-based approach within the context of consolidated codes.

3. Sharing of best practices between States

The study has revealed various models for further study, consideration, replication and dissemination among States. They include the following:

- Inter-agency approaches to implementation of the CRC by Latvia and Uzbekistan;
- Quasi-judicial approaches to juvenile justice administration by Ghana, Sierra Leone and Uganda;
- Community-based welfare monitoring approaches by countries such as Malaysia;
- Introduction of provisions on children in armed conflict by countries such as the Gambia and Nigeria;
- Institutional care as a measure of last resort for both children deprived of alternative family support and children in conflict with the law in countries such as Azerbaijan.

4. Costing of Statutes: Pilot projects among selected countries

Based on the observation that statutes offer opportunities for costing of delivery of services to children, a recommendation is being made for the initiation of costing interventions on a pilot basis. In doing so, choice of countries could be based on those with and without consolidated frameworks to serve as a basis for effective and informed comparison.

5. Dissemination of guidelines from the Committee and other UN treaty bodies

Based on the fact that the international jurisprudence on children continues to grow as manifested by the adoption of new protocols, declarations as well as General Comments issued by treaty bodies impact immensely on children, UNICEF and OHCHR should facilitate the design of simplified information packs for States Parties on important decisions emerging from both the General Assembly and treaty bodies. This point is also to be appreciated from the perspective that all human rights instruments in addition to General Comments by treaty bodies or decisions derived from them are interdependent and interrelated. Therefore, apart from General Comment 5, which has been extensively referred to in this study, States must
also be cognisant of the following other General Comments\textsuperscript{561} as a means of enhancing the contents of laws affecting children:

– General Comment No. 1 on the aims of education (2001);
– General Comment No. 2 on the role of independent national human rights institutions in the protection and promotion of the rights of the child (2002);
– General Comment No. 3 on HIV/AIDS and the rights of the child;
– General Comment No. 4 on adolescent health and development in the context of the Convention on the rights of the child (2003);
– General Comment No. 6 on the treatment of unaccompanied and separated children outside their country of origin (2005);
– General Comment No. 7 on implementing child rights in early childhood (2006);
– General Comment No. 8 on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (2006);
– General Comment No. 9 on the rights of children with disabilities (2006); and
– General Comment No. 10 on Children’s rights in Juvenile Justice (2007).

6. Codification and harmonisation of customary law and Shari’a with the CRC in all countries

The study has revealed the singular challenge of harmonisation of customary law with the CRC. The multi-ethnic nature of customary law demands wide consultation and dialogue across different ethnic communities and leaders.\textsuperscript{562} As the Committee observed with respect to Burkina Faso, this would require “a systematic involvement of community leaders in its programmes in order to fight against customs and traditions which impede the implementation of the Convention, and the adaptation of creative measures of communications for illiterate people.”\textsuperscript{563} In carrying out the process of harmonisation of customary law with the CRC, States must also take account of the expected financial and manpower resources especially to relevant partners, such as law reform commissions, in addition to the timeframe that it may demand.

4.4 Conclusions

This study has demonstrated the increasing importance of consolidated children’s rights statutes in the law reform efforts of State parties to the CRC, having been adopted by 35.7% of those who have ratified the CRC and yet to be adopted by an additional 16%, constituting a combined force of over 50% of State parties. The Committee on the Rights of the child has played a significant role in bringing to the attention of States the necessity of adopting a rights based approach in law reform processes, underscoring however that while consolidated statutes provide an opportunity for achieving this, they do not constitute an end in themselves. Law reform efforts of this kind can be effective only with the complementary efforts of policy development, institutional reforms and appropriate budgetary allocations.

\textsuperscript{561} See \url{http://www.ohchr.org/english/bodies/crc/comments.htm} for the full texts of these documents.
\textsuperscript{562} Ibid. Para. 12. Also see recommendations made to Burkina Faso etc
In some instances however the same conditions notwithstanding, the underlying basis for the Committee’s recommendations have differed across States. This has led to a situation in which wide variations in consolidated models and efforts exist among States. Hence statutes may either fall under frameworks of general, protection and more embracive categories, depending upon the intent of a particular country’s legislature at the time of passing the law. These are all healthy developments, however consistent guidelines by the Committee on its application of Comment 5 as a tool to facilitate law reform, would result in a higher measure of certainty, predictability and understanding in its jurisprudential role.

A review of the existing laws has however demonstrated that enacting States Parties have generally conformed to the CRC and other international instruments in many areas. Among the ones that can be mentioned are the principles of the CRC (in relation to non-discrimination, the best interests of the child, and the right of the child to survival and development and participation). The study finds that most States have provided for various measures of protection in the areas of identity, the right to know and be cared for by parents, the right to live in a family environment, rights in connection with juvenile justice administration, abuse, violence, exploitation and children under emergency situations. Within the range of provisions presented, shortcomings can be found in some statutes such as in those that relate to the definition of the child, age of criminal responsibility, corporal punishment and gender discrimination in parental responsibilities over children.

These concerns and shortcomings notwithstanding, consolidated statutes should be seen as important investments towards the realisation of the rights of the child in view of the significant opportunities they present to States. First and foremost is the high profile that is being given to the traditionally excluded area of Child Protection. Again opportunities are now presented to review outdated and scattered legislation, to cost the implementation of child-related services with a view to attracting funding within the framework of current trends in donor harmonisation and aid effectiveness and to hold governments accountable on the basis of its legal commitments to children.
Appendix 1: List of State Parties with Consolidated Statutes Passed and Pending

<table>
<thead>
<tr>
<th>Region</th>
<th>Country 564</th>
<th>Name and Year of Law</th>
<th>Status of the Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Africa</td>
<td>Botswana</td>
<td>The Children’s Act, 1981</td>
<td>The law is presently undergoing review with a view to harmonisation with the CRC and ACRWC.</td>
</tr>
<tr>
<td></td>
<td>Burkina Faso</td>
<td>The code consists of a compilation of legal texts</td>
<td>In force</td>
</tr>
<tr>
<td></td>
<td>Egypt</td>
<td>The Child Law, 1996</td>
<td>In force</td>
</tr>
<tr>
<td></td>
<td>Gambia</td>
<td>The Children’s Act, 2005</td>
<td>In force</td>
</tr>
<tr>
<td></td>
<td>Ghana</td>
<td>The Children’s Act, 1998</td>
<td>In force</td>
</tr>
<tr>
<td></td>
<td>Kenya</td>
<td>Children’s Act, 2001</td>
<td>In force</td>
</tr>
<tr>
<td></td>
<td>Lesotho</td>
<td>Children’s Protection and Welfare Bill, 2004</td>
<td>Awaiting legislative approval</td>
</tr>
<tr>
<td></td>
<td>Libya</td>
<td>Child Protection Act, 1997</td>
<td>In force</td>
</tr>
<tr>
<td></td>
<td>Malawi</td>
<td>Children and Young Persons Act, 1969</td>
<td>Undergoing harmonization with the CRC and soon to be replaced with Child Care, Protection and Justice legislation.</td>
</tr>
<tr>
<td></td>
<td>Mali</td>
<td>Code for the Protection of Children, 2002</td>
<td></td>
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<tr>
<td></td>
<td>Mauritius</td>
<td>The Protection of the Child (Miscellaneous Protection) Act 1998</td>
<td></td>
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<tr>
<td></td>
<td>Namibia</td>
<td>Children’s Act, 1960565</td>
<td>In force, but in process of being revised, to be superseded by a new Child Care and Protection Act.</td>
</tr>
<tr>
<td></td>
<td>Nigeria</td>
<td>An Act to Provide and Protect the Rights of the Nigerian Child and Other Related Matters, 2003.</td>
<td>Bill has been passed at Federal level. Ten States out of 36 have all passed it. The Constitution however requires a total of two-thirds enactment by all States prior to the Bill becoming law.</td>
</tr>
<tr>
<td></td>
<td>Sierra Leone</td>
<td>The Child Rights Act, 2006.</td>
<td>Awaiting Cabinet approval</td>
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<tr>
<td></td>
<td>South Africa</td>
<td>Children’s Act, 2005.</td>
<td>In force</td>
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<tr>
<td></td>
<td>Tunisia</td>
<td>Child Protection Code, 1995</td>
<td>In force</td>
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<tr>
<td></td>
<td>Uganda</td>
<td>The Children’s Act, 1993</td>
<td>In force</td>
</tr>
<tr>
<td>Asia</td>
<td>China</td>
<td>Law on the Protection of Minors</td>
<td>Draft</td>
</tr>
<tr>
<td></td>
<td>India -Goa</td>
<td>The Goa Children’s Act, 2003</td>
<td>In force</td>
</tr>
<tr>
<td></td>
<td>Indonesia</td>
<td>Law on</td>
<td>In force</td>
</tr>
</tbody>
</table>


565 This legislation operates in tandem with the Children’s Status Law of 2003. References are made as such to it under the law.
<table>
<thead>
<tr>
<th>Region</th>
<th>Country</th>
<th>Legislation</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asia</td>
<td>Singapore</td>
<td>Children and Young Persons Act, 2001</td>
<td>In force</td>
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<tr>
<td></td>
<td>Myanmar</td>
<td>The Child Law, 1993</td>
<td>In force</td>
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<tr>
<td></td>
<td>Malaysia</td>
<td>Child Act, 2001</td>
<td>In force</td>
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<tr>
<td></td>
<td>Maldives</td>
<td>Law on the Protection of the Rights of Children, 1991</td>
<td>In force</td>
</tr>
<tr>
<td></td>
<td>Nepal</td>
<td>The Children’s Act, 1992</td>
<td>In force</td>
</tr>
<tr>
<td></td>
<td>Pakistan</td>
<td>The Protection of Children’s Act, 2005</td>
<td>Draft</td>
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<tr>
<td></td>
<td>Thailand</td>
<td>Child Protection Act, 2003</td>
<td>In force</td>
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<tr>
<td></td>
<td>Yemen</td>
<td>Rights of the Child Act, 2002</td>
<td>In force</td>
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<td></td>
<td><strong>Caribbean and Pacific</strong></td>
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<tr>
<td></td>
<td>Dominican Republic</td>
<td>Code for the Protection of Children and Adolescents, 1994</td>
<td>In force</td>
</tr>
<tr>
<td></td>
<td>Haiti</td>
<td>Children’s Code, 2005</td>
<td>Draft undergoing review by Parliament</td>
</tr>
<tr>
<td></td>
<td>Jamaica</td>
<td>Child Care and Protection Act, 2003</td>
<td>In force</td>
</tr>
<tr>
<td></td>
<td>Trinidad and Tobago</td>
<td>Children Act, Chapter 46:01 (as amended by Act No. 33 of 1999 and, Acts Nos.64 and 68 of 2000 respectively).</td>
<td>In force</td>
</tr>
<tr>
<td></td>
<td><strong>Europe</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Armenia</td>
<td>Child Rights Act, 1996</td>
<td>In force</td>
</tr>
<tr>
<td></td>
<td>Belize</td>
<td>Families and Children’s Act, 1998</td>
<td>In force</td>
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<tr>
<td></td>
<td>Bulgaria</td>
<td>Child Protection Act, 2000</td>
<td>In force</td>
</tr>
<tr>
<td></td>
<td>Iceland</td>
<td>Child Protection Act, 2002</td>
<td>In force</td>
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<tr>
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<td>Estonia</td>
<td>Child Protection Act, 1992</td>
<td>In force</td>
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<tr>
<td></td>
<td>Hungary</td>
<td>Child Protection Act, 1997</td>
<td>In force</td>
</tr>
<tr>
<td></td>
<td>Ireland</td>
<td>Children Act, 2001</td>
<td>In force</td>
</tr>
<tr>
<td></td>
<td>Kyrgyzstan</td>
<td>Code for the Kyrgyz Republic on Children, 2006</td>
<td>In force</td>
</tr>
<tr>
<td></td>
<td>New Zealand</td>
<td>Children, Young Persons and Their Families Act, 1989.</td>
<td>In force</td>
</tr>
<tr>
<td></td>
<td><strong>Russian Federation</strong></td>
<td></td>
<td></td>
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<tr>
<td></td>
<td>Russian Federation</td>
<td>Law on the Guarantees of the Rights of the Child, 19988.</td>
<td>In force</td>
</tr>
<tr>
<td></td>
<td>Turkmenistan</td>
<td>Law of Turkmenistan on the Guarantees of the Rights of the Child, 2002</td>
<td>In force</td>
</tr>
<tr>
<td></td>
<td>United Kingdom</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Jersey</td>
<td>Children Act, 1989 (as amended in 2004).</td>
<td>In force</td>
</tr>
</tbody>
</table>

566 This law is in addition to national legislation, which ratified the CRC (UNICEF Russian Federation, 2006).
567 Any reference to the statute of the United Kingdom is to be read as both the Children Act of 1989 and the Children Act of 2004.
<table>
<thead>
<tr>
<th>Country</th>
<th>Law/Code</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Latin America/America's</td>
<td>Code for the Protection of Children and Adolescents, 2005</td>
<td>In force</td>
</tr>
<tr>
<td>Bolivia</td>
<td>Children and Adolescents Code, 1999</td>
<td>In force</td>
</tr>
<tr>
<td>Brazil</td>
<td>Code on Child and Adolescents, 1990</td>
<td>In force</td>
</tr>
<tr>
<td>Canada</td>
<td>Children’s Law Act, 1990 (as amended)</td>
<td>In force</td>
</tr>
<tr>
<td>-Saskatchewan</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Colombia</td>
<td>Children and Adolescents Code, 2006</td>
<td>In force</td>
</tr>
<tr>
<td>Costa Rica</td>
<td>Children and Adolescents Code, 1998</td>
<td>In force</td>
</tr>
<tr>
<td>Ecuador</td>
<td>Children and Adolescents Code, 2002</td>
<td>In force</td>
</tr>
<tr>
<td>El Salvador</td>
<td>Children and Adolescents Code, 2002</td>
<td>In force</td>
</tr>
<tr>
<td>Guatemala</td>
<td>Law for the Integral Protection of Children and Adolescents, 2003</td>
<td>In force</td>
</tr>
<tr>
<td>Honduras</td>
<td>Children and Adolescents Code, 1996</td>
<td>In force</td>
</tr>
<tr>
<td>Mexico</td>
<td>Law on the Protection of the Rights of Children and Youth, 2003 (as amended).</td>
<td>In force</td>
</tr>
<tr>
<td>Nicaragua</td>
<td>Children and Adolescents Code, 1998.</td>
<td>In force</td>
</tr>
<tr>
<td>Panama</td>
<td>Children and Adolescents Code, 2007</td>
<td>In force</td>
</tr>
<tr>
<td>Paraguay</td>
<td>Code for Children and Adolescents, 2001</td>
<td>In force</td>
</tr>
<tr>
<td>Peru</td>
<td>Children and Adolescents Code, 2000.</td>
<td>In force</td>
</tr>
<tr>
<td>Uruguay</td>
<td>Children and Adolescents Code, 2004</td>
<td>In force</td>
</tr>
<tr>
<td>Venezuela</td>
<td>Organic law for the Protection of Children and Adolescents, 1999</td>
<td>In force</td>
</tr>
<tr>
<td>Jordan</td>
<td>The Childhood Bill</td>
<td>Awaiting legislative approval</td>
</tr>
<tr>
<td>Palestine</td>
<td>Palestinian Child Law 2005</td>
<td>In force</td>
</tr>
</tbody>
</table>
### Appendix 2: List of Countries in Receipt of Specific Recommendations by the Committee to Enact a Consolidated Children’s Statute by Legal Tradition

<table>
<thead>
<tr>
<th>State Parties, which received express recommendations by the UNCRC to pass consolidated children’s statutes.</th>
<th>Legal Tradition</th>
<th>The express recommendation of the UNCRC.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Algeria</td>
<td>Mixed: Civil law, Shari’a and customary law</td>
<td>The Committee notes with concern that inadequate measures have been taken by the State party to harmonize national legislation with the principles and provisions of the Convention. The Committee notes in particular that the Family Code currently in force in Algeria does not adequately address all the rights recognized in the Convention. The Committee also notes with concern that the legal provisions relating to the protection and promotion of the rights of the child are scattered throughout domestic laws, making it difficult to assess the actual legal framework in the field of children's rights. The Committee recommends that the State party bring existing legislation into line with the principles and provisions of the Convention, and that it consider the possibility of enacting a comprehensive code for children.</td>
</tr>
<tr>
<td>Belize</td>
<td>Common law</td>
<td>The Committee appreciates the State party’s ongoing efforts to bring its domestic law into conformity with the provisions and principles of the Convention, resulting in recent legislative reforms and amendments, proposals to reform the Criminal Code and the Evidence Act and the review of the laws of Belize completed in 2003 by the National Committee for Families and Children, which will be used as the basis for further reforms. The Committee recommends that the State party continue to strengthen its efforts to ensure full conformity of its domestic law with the Convention, e.g. by enacting one comprehensive children’s code.</td>
</tr>
<tr>
<td>Benin</td>
<td>Plural (civil law and customary law).</td>
<td>The Committee notes the recent efforts of the State party to draft a Personal and Family Code that takes into account the situation of children. In this regard, the Committee further notes the State party's proposal to undertake a review of all legislation relating to children's rights with a view to drawing up comprehensive children’s code along the lines of the draft Personal and Family Code. The Committee remains concerned, however, that domestic legislation, and in particular the Dahomey Code of Customary Law, still does not fully reflect the principles and provisions of the Convention. The Committee encourages the State party to take all necessary measures to ensure the early enactment of the draft Personal and Family Code. The Committee recommends that the State party implement its proposal to undertake a review of its domestic legislation to ensure full conformity with the principles and provisions of the Convention and facilitate the enactment of a comprehensive children's code.</td>
</tr>
<tr>
<td>Bhutan</td>
<td>Shari’a</td>
<td>While noting various legislative measures already taken or proposed with respect to child rights (e.g. amendments to the 1980 Marriage Act, the 1993 Rape Act, the draft Juvenile Justice Act, draft Civil and Criminal Codes, and the draft Immoral Trafficking Act), the Committee is concerned that they do not reflect a comprehensive rights-based approach to the implementation of the Convention. The Committee recommends that the State party: (a) Ensure the speedy promulgation of legislation relating to child rights; (b) Undertake a comprehensive review of existing legislation, from a rights-based approach, to ensure its conformity with the principles and provisions of the Convention; and (c) Consider adopting a comprehensive children's code which would incorporate the principles and provisions of the Convention.</td>
</tr>
<tr>
<td>Burkina Faso</td>
<td>Mixed: Civil law, customary law and</td>
<td>The Committee notes that new laws have been adopted by the State party to harmonize the existing legislation with the Convention, but remains concerned</td>
</tr>
</tbody>
</table>

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568 The legal traditions of State Parties were verified from the Year Book (2003).
569 CO: Algeria. 18/06/97. CRC/C/15/Add.76. Paras. 12 & 29.
570 CO:Belize.31/03/2005.CRC/C/15/Add.252. Paras. 9 & 10. The Committee had previously made the same recommendation to the State Party upon submission of its initial report. See CO: Belize. 10/05/99.CRC/C/15/Add.99. Para. 7.
<table>
<thead>
<tr>
<th>Country</th>
<th>Domestic Legislation</th>
<th>Committee Recommendations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Burundi</td>
<td>Mixed: civil law and customary law.</td>
<td>The Committee recommends that the State party: (a) Take steps, using a rights-based approach, to harmonize existing legislation, including customary law, with the Convention; (b) Consider the adoption of a comprehensive children's code, reflecting the general principles of the Convention on the Rights of the Child; (c) Adopt a comprehensive family code.</td>
</tr>
<tr>
<td>Cameroon</td>
<td>Mixed: Civil law, common law and customary law.</td>
<td>The Committee welcomes the fact that State party plans to adopt a Child Protection Code and to review its legislation with a view to ensuring its conformity with the Convention including through the possibility of considering a comprehensive legislative act on the rights of the child.</td>
</tr>
<tr>
<td>Chad</td>
<td>Mixed: civil law and customary law and Shari’a.</td>
<td>While the Committee notes the efforts of the State party to review legislation, including the recent adoption of several laws dealing with different aspects of juvenile justice and the drafting of legislation to protect children against different forms of abuse, it remains concerned that other domestic legislation does not fully reflect the principles and provisions of the Convention. The Committee is also concerned that the current and proposed legislation covering children's rights is fragmented in different laws. The Committee recommends that a thorough review of all existing legislation be conducted to bring it into line with the provisions of the Convention and suggests that the State party consider enacting a comprehensive children's code, as recommended by the 1993 Sovereign National Conference.</td>
</tr>
<tr>
<td>Congo</td>
<td>Mixed: civil law and customary law.</td>
<td>The Committee encourages the State party to continue its efforts in the area of law reform with a view to ensuring full conformity with the principles and provisions of the Convention, to pursue early adoption of the code of laws on the rights and duties of children, and to ensure that customary law and traditional practices fully respect the provisions of the Convention.</td>
</tr>
<tr>
<td>Côte d'Ivoire</td>
<td>Plural (civil law and customary)</td>
<td>The Committee notes that a study was undertaken to identify the inconsistencies between domestic legislation and the Convention, but remains concerned, however, that domestic legislation, and in particular customary law, still does not fully reflect the principles and provisions of the Convention.</td>
</tr>
</tbody>
</table>

573 This recommendation had been previously made consequent to submission by Burkina Faso of its initial report of 1993. The Committee specifically recommended “that special efforts should be made by the Government to pursue the process of bringing the existing legislation into line with the provisions of the Convention and to take fully into account the interests of the child in the course of drafting new legislation, including through the possibility of considering a comprehensive legislative act on the rights of the child” (emphasis added). See CO: Burkina Faso. 25/04/94.CRC/C/15/Add.19. 
575 CO:Burundi.16/102000.CRC/C/15/Add.133.Para 
577 CO: Chad. 24/08/99.CRC/C/15/Add.107. Para.11 

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<table>
<thead>
<tr>
<th>Country</th>
<th>System of Law</th>
<th>Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Democratic Republic of Congo</td>
<td>Mixed: Civil law and customary law.</td>
<td>The Committee encourages the State party to adopt a comprehensive code.</td>
</tr>
<tr>
<td>Gambia</td>
<td>Mixed: Civil law, customary law and Shari’a.</td>
<td>The Committee recommends the adoption of a comprehensive children’s code.</td>
</tr>
<tr>
<td>Georgia</td>
<td>Civil law</td>
<td>The Committee recommends the consideration of drafting and adopting a comprehensive children’s rights Act.</td>
</tr>
<tr>
<td>Grenada</td>
<td>Mixed: Common law and customary law.</td>
<td>The Committee recommends the adoption of a comprehensive children’s rights code.</td>
</tr>
</tbody>
</table>

The Committee encourages the State party to take all necessary measures to ensure that its domestic legislation conforms fully to the principles and provisions of the Convention. In that respect, the Committee recommends that the State party continue its efforts to adopt a comprehensive code on the rights of the child. Moreover, the Committee recommends that the State party address in more depth the problem of customary law that is inconsistent with the Convention on the Rights of the Child.  

The Committee is concerned at the serious failure to implement existing legislation. The Committee notes, in addition, the State party's acknowledgement in its report that the content and application of specific domestic laws are sometimes inconsistent with the Convention on the Rights of the Child. The Committee is concerned that, among others, the following legal instruments are not fully compatible with the provisions of the Convention: the Family Code, the Labour Code, the Criminal Code, the Criminal Procedure Code, the Civil Code, the Code on Judicial Organization and Competence and the Decree of 6 December 1950 with regard to delinquency. The Committee recommends that the State party strengthen its efforts to implement existing legislation relative to the promotion and protection of children's rights. The Committee also encourages the State party to expedite the enactment of a comprehensive children's code which would gather together in one instrument all of the main provisions of domestic legislation of direct relevance to children.  

The Committee is concerned at the continued existence of customs and traditions which prevent children from fully enjoying their rights. The Committee recommends that the State party take all necessary measures to ensure that its domestic legislation conforms fully to the principles and provisions of the Convention. In this regard, the Committee recommends that the State party: (b) Consider the adoption of a comprehensive children’s code which will reflect the general principles of the Convention on the Rights of the Child.  

The Committee recommends that the State party continue its efforts to adopt a comprehensive code on the rights of the child. Moreover, the Committee recommends that the State party proceed with its efforts to review, and amend as appropriate, domestic legislation to ensure its full conformity with the provisions of the Convention. In that respect, the Committee recommends that the State party: (b) Consider the adoption of a comprehensive children’s code that would gather together in one instrument all of the main provisions of domestic legislation of direct relevance to children.  

The Committee notes that new laws have been adopted by the State party to harmonize the existing legislation with the Convention and welcomes the comparative study of national laws, the Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child that was carried out in 1998, but the Committee remains concerned at the weak implementation of legislation. The Committee encourages the State party to take all necessary measures to ensure that its domestic legislation conforms fully to the principles and provisions of the Convention. In that respect, the Committee recommends that the State party: (b) Consider the adoption of a comprehensive children’s code.|

The Committee is concerned that domestic legislation, including customary law and the sharia, does not fully reflect the principles and provisions of the Convention. The Committee is also concerned that the legislation relevant to children's rights is fragmented in different laws. The Committee expresses concern at the continued existence of customs and traditions which prevent children from fully enjoying their rights. The Committee recommends that the State party take effective measures, including a thorough review of all existing legislation, to ensure that domestic law, including customary and Islamic laws, fully conforms to the provisions and principles of the Convention on the Rights of the Child. In that respect, the Committee also encourages the State party to expedite the enactment of a comprehensive children’s code. |

The Committee notes the recent efforts by the State party to enact additional legislation to ensure greater consistency with the Convention. The Committee also notes the intention of the State party to commission a review of all legislation relevant to children with a view to introducing a comprehensive children’s code. The Committee is concerned, however, that domestic legislation still does not fully reflect the principles and provisions of the Convention. The Committee recommends that the State party proceed, at the earliest possible opportunity, with its plan to undertake legislative review to ensure greater consistency with the principles and provisions of the Convention and facilitate the adoption of a comprehensive children’s rights code.|

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581 CO:Gabon.01/02/2002.CRC/C/15/Add.171. Paras. 6&7.  
583 CO:Georgia.27/10/2003.CRC/C/15/Add.222. Paras. 10&11.  
584 CO:Grenada.28/02/2000.CRC/C/15/Add.121. Para.7.
<table>
<thead>
<tr>
<th>Country</th>
<th>Legal Systems</th>
</tr>
</thead>
<tbody>
<tr>
<td>Guinea</td>
<td>Mixed: Civil law, customary law and Shari’a.</td>
</tr>
<tr>
<td>Haiti</td>
<td>Mixed: Civil law and customary law.</td>
</tr>
<tr>
<td>India</td>
<td>Mixed: Islamic, Hindu, common law and customary law.</td>
</tr>
<tr>
<td>Iraq</td>
<td>Shari’a.</td>
</tr>
<tr>
<td>Israel</td>
<td>Mixed: Common law, civil law and Jewish law.</td>
</tr>
<tr>
<td>Kuwait</td>
<td>Shari’a.</td>
</tr>
<tr>
<td>Laos</td>
<td>Civil law</td>
</tr>
</tbody>
</table>

While the Committee notes that the State party's legislation (for example, the Code des personnes et de la famille covers several provisions of the Convention), it remains concerned that other domestic legislation does not fully reflect the principles and provisions of the Convention. The Committee is also concerned that the current legislation covering children's rights is fragmented in different laws without due regard to the integrated approach of the Convention. The Committee recommends that the State party take all necessary measures to review its legislation on children's rights with respect to its full conformity with the principles and provisions of the Convention. The Committee suggests that the State party consider enacting a comprehensive piece of legislation such as a children's code.

In the light of article 4 of the Convention, the Committee notes the unclear status of the Convention in the domestic legal framework and is concerned about the insufficient steps taken to bring existing federal, state and personal status laws into full conformity with the Convention. The Committee recommends that the State party pursue efforts to ensure full compatibility of its legislation with the Convention, taking due account of the general principles of the Convention. In this regard, the Committee encourages the State party to consider adopting a code for children.

While the Committee notes that the State party has developed a substantive legislative framework, it is still concerned that the provisions and principles of the Convention are not fully reflected in law. The Committee recommends that the State party take all appropriate measures to engage, where necessary, in a process of law reform, for example, by enacting a children's code to ensure full compliance with the Convention.

The Committee welcomes the commitment of the various parliamentary committees campaigning to promote children's rights through, among other things, proposals for new legislation (i.e. on implementation of the Convention and on the right to quality education on an equal basis) in the area of children's rights. The Committee encourages the State party: (a) To ensure the speedy promulgation of legislation relating to child rights and its effective implementation; (b) To consider the adoption of a comprehensive children’s code, which would incorporate the principles and provisions of the Convention. The Committee recommends that the State party take all appropriate measures to engage, where necessary, in a process of law reform, for example by enacting a children's code to ensure full conformity with the Convention.

The Committee encourages the State party to consider adopting a code for children. The Committee recommends that the State party take all appropriate measures to engage, where necessary, in a process of law reform, for example by enacting a children's code to ensure full conformity with the Convention.

The Committee notes that a draft Code on Children is being prepared to harmonize existing legislation with the Convention, but remains concerned; nonetheless, that domestic legislation still does not fully reflect the principles and provisions of the Convention. The Committee recommends that the State party pursue efforts to ensure full compatibility of its legislation with the Convention, taking due account of the general principles of the Convention. In this regard, the Committee encourages the State party to consider adopting a code for children.

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The Committee notes that the State party has developed a legislative framework, it is still concerned that the provisions and principles of the Convention are not fully reflected in law. The Committee recommends that the State party adopt a comprehensive code for children.

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The Committee encourages the State party: (a) To ensure the speedy promulgation of legislation relating to child rights and its effective implementation; (b) To consider the adoption of a comprehensive children’s code, which would incorporate the principles and provisions of the Convention. The Committee recommends that the State party take all appropriate measures to engage, where necessary, in a process of law reform, for example by enacting a children's code to ensure full conformity with the Convention.

The Committee recommends that the State party take all appropriate measures to engage, where necessary, in a process of law reform, for example by enacting a children's code to ensure full conformity with the Convention.

The Committee is concerned that although a new Constitution was promulgated in 1991 and major pieces of legislation, such as the Family Law, the Penal Law, and the Labour Law, came into effect in 1990, the national

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585 CO:Guinea. 10/05/99.CRC/C/15/Add.100. Para.8.
586 CO:Haiti. 18/03/2003. CRC/C/15/Add.202. Paras. 5&6. In the case of Haiti, the draft code was in place prior to its submission of an initial report to the Committee in 2002. However, the enormous delay (draft legislation was submitted by a parliamentary commission in 1998) in fully enacting the draft law had resulted in the application of laws which had already been deemed inconsistent with the CRC. In the eyes of the Committee, legislative delay was tantamount to legislative inaction. Thereby the situation was as good as the absence of such a comprehensive law in contemplation. To this end, the Committee was compelled to treat Haiti as though it had no draft law in place, hence the recommendation so made. Sub part of the study examined the implications of delays in the passage of consolidated laws from other perspectives.
588 CO: Iraq. 26/10/98.CRC/C/15/Add.94. Para.7.
589 CO: Israel.09/10/2002.CRC/C/15/Add.195. Paras. 8-11. The Committee was also concerned about the existence of religious laws which conflicted with the CRC. See Para. 10.
590 CO: Kuwait.26/10/98.CRC/C/15/Add.96. Para.10.
<table>
<thead>
<tr>
<th>Country</th>
<th>Legal System</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lesotho</td>
<td>Mixed: Roman Dutch, common law and customary law.</td>
<td>Legislation does not fully conform to the Convention. The Committee recommends that the State party initiate a comprehensive review of existing legislation with a view to undertaking adequate legislative reform to ensure full conformity of its legislation with all the provisions of the Convention, in particular its general principles (arts. 2, 3, 6 and 12). The Committee also suggests that the State party envisage the adoption of a specific code or legislation for children, with a separate section on children who need a special protection. 591</td>
</tr>
<tr>
<td>Libya</td>
<td>Shari’a.</td>
<td>The Committee is concerned that domestic legislation is not in full conformity with the principles and provisions of the Convention. The Committee recommends that the State party consider enacting a children’s code. The Committee recommends specifically that the legislation explicitly prohibit discrimination on any grounds, including language, national, ethnic or social origin, property, disability and birth status. The Committee also recommends that domestic legislation be reformed to guarantee the right to a nationality to every child in the light of article 7 of the Convention. 592</td>
</tr>
<tr>
<td>Malawi</td>
<td>Mixed: Roman Dutch, common law and customary law.</td>
<td>The Committee notes that the State party is planning to harmonize the existing legislation with the Convention and welcomes the establishment of the Law Commission, which is in charge of reviewing laws to determine if they conform to international human rights standards and which has formulated several recommendations for amending laws with regard to children. However, the Committee remains concerned that domestic legislation, including customary law, still does not fully reflect the principles and provisions of the Convention. The Committee recommends that the State party (b) considers the adoption of a comprehensive Children’s code which will reflect the general principles of the Convention on the Rights of the Child. 593</td>
</tr>
<tr>
<td>Marshall Islands</td>
<td>Common law.</td>
<td>The Committee notes with concern that the Convention has not yet been enacted into law, which is necessary in order for it to be a part of the Marshallese legal system…[I]t also expresses its concern that the domestic legislation and customary law do not fully reflect the principles and provisions of the Convention. The Committee recommends that the State party take all necessary steps to incorporate the Convention into domestic law and that it undertake the review of all aspects of its domestic legislation relating to children with a view to ensuring full conformity with the principles and provisions of the Convention. It also recommends that the State party consider the enactment of a comprehensive children’s code. 595</td>
</tr>
<tr>
<td>Mauritius</td>
<td>Mixed: Civil law and customary law.</td>
<td>The Committee notes with appreciation the various measures undertaken by the State party to amend existing laws and introduce new laws to ensure compliance with the CRC. However, the Committee remains concerned about the fact that some of the legislation does not conform to the principles and provisions of the Convention, including in the area of adoption and juvenile justice. The Committee recommends that the State party strengthen its efforts to continue reviewing its legislation with the aim of ensuring full compliance with the principles and provisions of the Convention. Furthermore, the Committee encourages the State party to consider…</td>
</tr>
</tbody>
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591 CO: Lao Peoples Democratic Republic. 10/10/97.CRC/C/15/Add.78. Paras. 8 & 30.  
592 CO:Lesotho.21/02/2001.CRC/C/15/Add.147. Paras. 9&10.  
593 CO: Libyan Arab Jamahiriya.04/02/98.CRC/C/15/Add.84. Paras. 6 & 18.  
594 CO:Malawi.01/02/2002.CRC/C. Paras.6 & 7.  
enacting a comprehensive Children’s Act to consolidate the various pieces of legislation covering all aspects of child rights.596

Micronesia  
Mixed: Common law and customary law.  
The Committee is concerned that domestic legislation does not fully conform to the provisions and principles of the Convention. In particular, the Committee is concerned at the absence of legislation regulating child labour providing for a minimum age for employment, the absence of a clear definition of the minimum age for criminal responsibility, the low minimum age for sexual consent, the lack of harmonization between the different ages of sexual consent among the four states, and the lack of legislation on neglect, abuse and sexual exploitation. The Committee is also concerned at the possible conflicts between customary and statutory law, in particular for marriage and adoption. The Committee recommends that the State party initiate a comprehensive review of existing legislation, both at the national and the state level, with a view to undertaking adequate legislative reforms to ensure full conformity of its legislation with the principles and provisions of the Convention…The Committee also suggests that the State party envisage the adoption of a specific code or legislation for children and adolescents, with a separate section on children who need special protection.597

Mozambique  
Mixed: Civil law and customary law.  
The Committee is concerned that there remain inconsistencies between domestic legislation and the Convention. The Committee is also concerned that, as indicated in the State party’s report, in instances where it conflicts with international instruments domestic legislation prevails, and that inconsistencies between the two may lead to violations of the Convention. Noting the State party’s significant efforts to address inconsistencies between domestic legislation and the Convention, the Committee recommends that the State party: (c) Pursue its efforts to resume the process of drafting and adopting a comprehensive children’s code incorporating, inter alia, the principles of the Convention.598

Niger  
Mixed: Civil law and customary law.  
The Committee notes that new laws have been adopted by the State party to harmonize the existing legislation with the Convention. Nevertheless, the Committee remains concerned at the weak implementation of the Constitution as far as children’s rights are concerned. Domestic legislation and customary law still do not fully reflect the principles and provisions of the Convention. The Committee encourages the State party to continue and strengthen its reform activities in order to ensure that its domestic legislation conforms fully to the principles and provisions of the Convention. In that respect, the Committee recommends that the State party:  
(a) Strengthen the implementation of the Constitution as far as children’s rights are concerned;  
(b) Undertake all the necessary steps to harmonize existing legislation and customary law with the Convention;  
(c) Consider the adoption of a comprehensive children’s code which will reflect the general principles of the Convention;  
(d) Consider the elaboration and adoption of a comprehensive family code.599

Oman  
Shari’a  
While noting various legislative measures already taken or proposed with respect to child rights (e.g. 1999 Civil Status Law, 1999 Criminal Procedure Law, draft Juveniles Law), the Committee is concerned that they do not sufficiently reflect a comprehensive rights-based approach to the implementation of the Convention. The Committee recommends that the State party:  
(a) Undertake a comprehensive review of existing legislation from a rights-based approach, to ensure its conformity with the principles and provisions of the Convention;  
(b) Consider the adoption of a comprehensive children’s code, which would incorporate the principles and provisions of the Convention.600

Palau  
Mixed: Common law and customary law.  
While the Committee notes that the State party has undertaken a study to determine the inconsistencies between its laws (both statutory and customary laws) and the Convention, it is concerned that insufficient efforts have been made to address the inconsistencies found. Concern is expressed that domestic legislation still does not fully conform to the principles and provisions of the Convention. The Committee recommends that the State party take all effective measures to ensure that its laws conform fully to the principles and provisions of the Convention. The Committee also encourages the

597 CO: Micronesia (Federated States of). 04/02/98.CRC/C/15/Add. 86. Paras.6 & 22.  
<table>
<thead>
<tr>
<th>Country</th>
<th>Legal System</th>
<th>Recommendation</th>
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<tbody>
<tr>
<td>Panama</td>
<td>Civil law</td>
<td>The Committee is concerned about the insufficient measures taken by the State party to harmonize national legislation with the principles and provisions of the Convention. In this regard, the Committee is concerned that the Family Code presently in force in Panama does not adequately address the rights recognized by the Convention. Within the context of the legal reform undertaken by Panama, the Committee recommends that... the State party adopt all the necessary measures to ensure the full compliance of its national legislation with the Convention. In this regard, the Committee encourages the State party to pursue its efforts aimed at the adoption of a Code on Children. Furthermore, the Committee recommends that any required changes to legislation be undertaken in the light of article 2 (non-discrimination), article 3 (best interests of the child), article 6 (right to life, development and survival) and article 12 (respect for the views of the child). In this spirit, the Committee recommends that the State party define in its legislation a minimum age below which children may not be deprived of their liberty. Similarly, measures must be undertaken to ensure the conformity of national legislation with the provisions of article 37 (a) of the Convention. Further, the Committee recommends that the State party review its legislation on the age of marriage for girls with a view to raising it. The Committee encourages the State party to take all appropriate measures to protect children against sexual exploitation.</td>
</tr>
<tr>
<td>St. Kitts &amp; Nevis</td>
<td>Mixed: Common law and customary law</td>
<td>The Committee notes the recent efforts by the State party to undertake a review of existing legislation regarding children and the family. It is concerned, however, that domestic legislation still does not fully reflect the principles and provisions of the Convention. The Committee recommends that the State party seek to ensure that its domestic legislation conforms to the principles and provisions of the Convention. The Committee also encourages the State party to consider the possibility of enacting a comprehensive children's rights code.</td>
</tr>
<tr>
<td>St. Vincent &amp; Grenadines</td>
<td>Mixed: Common law and customary law</td>
<td>While noting that the State party has begun, within the framework of the Organization of Eastern Caribbean States (OECS), a process of harmonizing its legislation with regard to children and the family, the Committee is nevertheless concerned that this process is slow, that some existing legislation is outdated and does not fully take into consideration the Convention’s principles and provisions, and that there has not been a general review of legislation of direct relevance to children since before the State party ratified the Convention. The Committee recommends that the State party: (a)Continue and strengthen its ongoing efforts to conduct a general review of the conformity of its legislation with the principles and provisions of the Convention; (b)Where needed, amend existing legislation or adopt new legislation with a view to strengthening the legislative framework for the implementation of the Convention and, in this context, make every effort to proceed with the OECS (and partners') programme for the harmonization of laws relating to families and children (as described in the replies to the list of issues); (c)Proceed with the commitment, as mentioned by the delegation, to consider the adoption by Parliament of a rights-based children’s code, compiling the main elements of domestic legislation of direct relevance to children and incorporating the provisions and principles of the Convention, including the best interests principle.</td>
</tr>
<tr>
<td>Suriname</td>
<td>Mixed: Common law and customary law</td>
<td>While the Committee notes the recent efforts by the State party to enact legislation to ensure greater consistency with the Convention, it is concerned that legislation still does not fully reflect the principles and provisions of the Convention... The Committee recommends that the State party take all appropriate measures to ensure that its laws conform to the principles and provisions of the Convention. The Committee also encourages the State party to consider the possibility of enacting a comprehensive code for children.</td>
</tr>
<tr>
<td>Tanzania</td>
<td>Mixed: Common law and customary law</td>
<td>The Committee is encouraged by the commitment expressed by the State party to incorporate the general principles of the Convention into all domestic legislation relevant to children. The Committee notes that a review of domestic law was undertaken by the Law Reform Commission to determine any inconsistencies with the Convention and that efforts have been made to introduce some of the recommendations of the Commission. However, the</td>
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602 CO: Panama. 24/01/97. CRC/C/15/Add.68. Paras. 9 & 22.
Committee remains concerned that domestic, applied Islamic and customary law still do not fully comply with the provisions and principles of the Convention. The Committee recommends that the State party reinforce its efforts to ensure that domestic law, including Islamic and customary law, fully conforms to the provisions and principles of the Convention on the Rights of the Child. The Committee encourages the State party to consider adopting a comprehensive children's code which would include the principles of the Convention, with a view to enhancing a rights based approach.606

Thailand
Mixed: Common law and civil law.
The Committee notes that the State party has developed a substantive legislative framework. It is concerned, however, that domestic legislation still does not fully reflect the principles and provisions of the Convention. The Committee recommends that the State party undertake a review of its domestic legislation to ensure full conformity with the principles and provisions of the Convention. In this regard, the Committee also encourages the State party to consider the possibility of enacting a comprehensive code for children.607

Togo
Civil law and customary law.
The Committee notes with concern that currently several provisions of the national legislation, inter alia in the areas of civil rights, including right to nationality, as well as adoption, labour and juvenile justice, are not in conformity with the provisions and principles of the Convention on the Rights of the Child. The Committee recommends that the State party initiate a comprehensive study on the compatibility of national legislation with the principles and provisions of the Convention on the Rights of the Child with a view to engaging in a law-reform process which would result in the enactment of a comprehensive children's code.608

United Kingdom of Great Britain and Northern Ireland (Overseas Territories)
Common law.
The Committee notes that efforts have been made in a number of the Overseas Territories to introduce legislative reform and facilitate the implementation of the Convention. In this regard, the Committee notes that Bermuda has enacted the Children's Act (1998), the Child Abduction Act (1998), which gives effect to the Hague Convention on the Civil Aspects of Child Abduction, and the Domestic Violence (Protection Orders) Act (1997). The Cayman Islands have enacted the Maintenance Law (1996 Revisions), the Youth (Detention Facility) Order (1996) and the Youth Justice Law (1995). The Falkland Islands and St. Helena have both adopted a children's ordinance, in 1994 and 1996 respectively. The Committee notes with concern that the Children's Law in the Cayman Islands, enacted in 1995, has not been brought into force and that additional amendments are due to be made to the law. While the Committee notes the intention of a number of the Overseas Territories to introduce additional legislative reform, it remains concerned that domestic legislation in the Territories still does not fully reflect the principles and provisions of the Convention. The Committee recommends that the State party undertake a legal compatibility review to ensure that domestic legislation in each of the Overseas Territories fully conforms with and positively reflects the principles and provisions of the Convention. The Committee encourages the Cayman Islands to reinforce its efforts to amend and bring into force its Children's Law. The Committee also encourages the adoption of comprehensive child rights codes in the Territories.609

Uzbekistan
Civil law
While noting various legislative measures already taken or proposed with respect to child rights (for example, the 1998 Family Code, the 1996 Code of Administrative Liability, the 1996 Civil Code, the 1994 Criminal Code and the 1995 Labour Code), the Committee is concerned that they do not sufficiently reflect a comprehensive rights-based approach to the implementation of the Convention. The Committee recommends that the State party: (a) Consider children's rights, as granted by the Convention, as a priority; (b) Undertake a comprehensive review of existing legislation, from a rights-based approach, to ensure its conformity with the principles and provisions of the Convention; (c) Consider adopting a comprehensive children's code incorporating the principles and provisions of the Convention.610

Vanuatu
Mixed: Common law and civil law.
The Committee expresses its concern that domestic legislation and customary law do not fully reflect the principles and provisions of the Convention. The

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608 CO: Togo. 10/10/97.CRC/C/15/Add.83. Paras. 8 & 31.
609 CO (Over Seas Territories): United Kingdom of Great Britain and Northern Ireland. 16/10/2000. CRC/C/15/Add. 135. Paras. 9 & 10. This was in response to the initial report of the United Kingdom with respect to Overseas Dependent Territories and Crown Dependencies. See CRC/C/41/Add.9.
Committee recommends that the State party undertake a review of its domestic legislation with a view to ensuring full conformity with the principles and provisions of the Convention. The Committee also recommends that the State party consider the enactment of a comprehensive children's code.\(^{611}\)

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<thead>
<tr>
<th>Country</th>
<th>Legal System</th>
<th>Note</th>
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<tr>
<td>Zambia</td>
<td>Mixed: Common law and claw.</td>
<td>The Committee notes the efforts undertaken by the State party to harmonize domestic legislation, including customary laws, with the Convention, notably through the activities of the Law Development Commission. However, the Committee remains concerned that domestic legislation still does not fully reflect the principles and provisions of the Convention and that, in particular, various customary laws are in opposition to the Convention in many respects. The Committee recommends that the State party: Continue and strengthen its efforts, notably through the Law Development Commission, to review existing legislation and customary laws with the aim of bringing them into conformity with the Convention. Pursue its efforts for the adoption of a comprehensive children’s code which will reflect the general principles of the Convention.(^{612})</td>
</tr>
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\(^{611}\) CO: Vanuatu. 10/11/99. CRC/C/15/Add.111. Para. 7.  
\(^{612}\) CO: Zambia. 02/07/2003. CRC/C/15/Add. 206. Paras. 5-6.
Appendix 3: Specific Observations by the Committee on a selected number of existing consolidated statutes

<table>
<thead>
<tr>
<th>State Party</th>
<th>Comments and Recommendations by the Committee</th>
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<tbody>
<tr>
<td>Armenia</td>
<td>While the Committee takes note that the 1996 Rights of the Child Act reflects some principles and provisions of the Convention, it nevertheless remains concerned that other relevant laws are not in full conformity with the Convention, and that disparities exist between law and practice. The Committee recommends that the State party pursue efforts to ensure full compatibility of its legislation with the Convention, based on a child rights approach and taking due account of the principles and provisions of the Convention. The Committee recommends greater steps be taken to ensure that these measures are fully implemented.</td>
</tr>
<tr>
<td>Kyrgyzstan</td>
<td>The Committee welcomes the changes in domestic legislation, which should provide a basis for strategies and practice. However, the Committee is concerned that all domestic legislation does not fully conform to the principles and provisions of the Convention. The Committee is also concerned that the new Children Code may not be in compliance with the Convention, especially in the areas of reproductive health and adoption. The Committee recommends that the State party undertake a comprehensive review of domestic legislation in order to ensure that it conforms fully to the principles and provisions of the Convention. The Committee urges the State party to organize a broad consultative process in order to prepare for the adoption of the Children Code and to ensure that the Code is in full compliance with the provisions and principles of the Convention.613</td>
</tr>
<tr>
<td>Latvia</td>
<td>While noting that the Law on the Protection of the Rights of the Child of 1998 reflects some principles and provisions of the Convention, the Committee nevertheless remains concerned that other relevant laws, inter alia some outdated provisions regarding family and adoption in the 1937 Civil Law, are not in full conformity with the Convention and that disparities exist between law and practice.614</td>
</tr>
<tr>
<td>Libya</td>
<td>The Committee notes the adoption of the Child Protection Act No. 5 of 1997, in addition to the numerous other laws and decisions that have been adopted with a view to improving the welfare of children. It is concerned, however, that many measures reflect a predominantly welfare- rather than rights-based approach. The Committee reiterates its concern that several rights contained in the Convention (e.g. non-discrimination, the best interests of the child, rights concerning juvenile justice) are not adequately reflected in the laws, including personal status laws. The Committee encourages the State party: (a) To ensure that its laws, administrative regulations and legal procedure rules conform to the provisions and principles of the Convention and to other international human right standards; in this respect, it encourages the State party to take the necessary steps to adopt a single “integrated” law on children's rights in order to provide a comprehensive legal foundation at the domestic level for implementation of Convention rights; (b) To take all possible measures to reconcile the interpretation of religious laws with fundamental human rights.616</td>
</tr>
<tr>
<td>Lithuania</td>
<td>The Committee notes that the implementation of some provisions of the Law on the Fundamentals of Protection of the Rights of the Child of the Republic of Lithuania of 1996 required the adoption of new specific laws and is concerned these laws have not yet been enacted. The Committee recommends that the State party expeditiously enact the laws necessary to fully implement the Law on the Fundamentals of Protection of the Rights of the Child of the Republic of Lithuania of 1996. It further encourages the State party to take the necessary steps to ensure that all its legislation is fully in conformity with the principles and provisions of the Convention.617</td>
</tr>
<tr>
<td>Maldives</td>
<td>The Committee expresses its concern regarding the need to harmonize fully the Law on the Protection of the Rights of the Child (Law No. 9/91) and other domestic legislation with the principles and provisions of the Convention, taking into account its holistic nature.618 The Committee recommends the State party to engage in a comprehensive reform of</td>
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614 CO: Latvia. 21/02/2001.CRC/C/15/Add.142. Para.7. This was subsequently taken account of by the time of submission of its Second Periodic report. See SPR: Latvia. 24/08/2005.CRC/C/83/Add.16. However, the Committee was concerned that there remained a gap between law and practice, particularly in the areas of education, health care, juvenile justice and protection from violence.
615 This would amount to the second time that the Committee would be making a recommendation to enact a children’s statute. Although Libya has taken some measures upon the first recommendation of the Committee (see table ), it becomes apparent from this comment that those steps fell short of meeting CRC requirements.
617 CO: Lithuania. 21/02/2001.CRC/C/15/Add.146. Paras. 9 &10.
618
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<tr>
<th>Country</th>
<th>Content</th>
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<tr>
<td>Mauritius</td>
<td>The Committee notes with appreciation the various measures undertaken by the State party to amend existing laws and introduce new laws to ensure compliance with the CRC. However, the Committee remains concerned about the fact that some of the legislation does not conform to the principles and provisions of the Convention, including in the area of adoption and juvenile justice. The Committee recommends that the State party strengthen its efforts to continue reviewing its legislation with the aim of ensuring full compliance with the principles and provisions of the Convention. Furthermore, the Committee encourages the State party to consider enacting a comprehensive Children’s Act to consolidate the various pieces of legislation covering all aspects of child rights.</td>
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<tr>
<td>Mexico</td>
<td>The Committee welcomes the State party’s plans to amend its domestic legislation, most notably the 1992 Children’s Act, to ensure full conformity with the principles and provisions of the Convention. However, it expresses some concern about the pace of such undertakings. The Committee also reiterates its previous concern regarding the disparities in legislation, in particular, in local, customary and religious laws, which result in uneven and discriminatory protection and promotion of children’s rights. The Committee recommends that the State party continue to strengthen the process of achieving compliance of its legislation, in particular, the 1992 Children’s Act, with the principles and provisions of the Convention. The Committee further recommends that the State party remove the current age restriction in the Children’s Act to ensure that children of all ages are able to approach the court for protection.</td>
</tr>
<tr>
<td>Nepal</td>
<td>The Committee welcomes the State party’s plans to amend its domestic legislation, most notably the 1992 Children’s Act, to ensure full conformity with the principles and provisions of the Convention. The Committee also reiterates its previous concern regarding the disparities in legislation, in particular, in local, customary and religious laws, which result in uneven and discriminatory protection and promotion of children’s rights. The Committee recommends that the State party continue to strengthen the process of achieving compliance of its legislation, in particular, the 1992 Children’s Act, with the principles and provisions of the Convention. The Committee further recommends that the State party remove the current age restriction in the Children’s Act to ensure that children of all ages are able to approach the court for protection.</td>
</tr>
<tr>
<td>Nigeria</td>
<td>The Committee, while noting that 20 states are in the process of enacting the 2003 Child Rights Act (CRA), remains concerned that, to date, only 4 out of 36 states have enacted the CRA. The Committee is also concerned that many of the existing legislation at federal, State and local level in the State party, in particular the religious and customary laws, do not fully comply with the principles and provisions of the Convention. The Committee recommends that the State party engage all efforts and resources necessary for the effective implementation of the rights and principles enshrined in the Child Rights Act, and ensure as a matter of priority that the Act is duly adopted in all states. The Committee also reiterates its previous concern regarding the disparities in legislation, in particular, in local, customary and religious laws, which result in uneven and discriminatory protection and promotion of children’s rights. The Committee recommends that the State party continue to strengthen the process of achieving compliance of its legislation, in particular, the 1992 Children’s Act, with the principles and provisions of the Convention. The Committee further recommends that the State party remove the current age restriction in the Children’s Act to ensure that children of all ages are able to approach the court for protection.</td>
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<tr>
<td>Paraguay</td>
<td>The Committee recommends that the State party: (b) Ensure the implementation of the Children's Code in full compliance with the Convention, paying particular attention to the</td>
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elimination of the traditional concept of "irregular situation" and to the need for adequate structures by allocating the necessary human and financial resources.624

Peru
The Committee notes that there are still discrepancies between some domestic laws and the Convention. Concern is expressed in particular about the articles in the Code on Children and Adolescent referring to "pernicious gangs" (Decree Law No. 899 on "pandillaje pernicioso") which provide that persons below 18 in conflict with this law may be deprived of liberty for up to six years, and at the so-called “Begging Bill” ("Ley de Mendicidad") No. 28190). The Committee recommends that the State party increase its efforts to guarantee the full harmonization of its domestic law with the Convention and to consider repealing the “Begging Bill” and the article in the Children's Code referring to "pandillaje pernicioso."625

Thailand
The Committee notes with appreciation the measures taken by the State party to bring national legislation into conformity with the Convention, in particular the Child Protection Act. It notes, however, that the implementation and enforcement of such legislation, particularly at the local level, in such areas as children in conflict with the law, trafficking, child labour and violence against children, require further attention in order to ensure full compliance with the principles and provisions of the Convention. It also notes that some existing legislation, for example the Penal Code regarding the minimum age of criminal responsibility (7 years), is still not in compliance with the Convention. The Committee encourages the State party to continue its efforts to harmonize its legislation fully with the provisions and principles of the Convention. It also encourages the State party to continue its efforts to ensure the full and effective implementation of its national legislation through, inter alia, dissemination to legislators and law enforcement officials, as well as awareness-raising activities, in order to better protect the rights of the child.626

Togo
The Committee remains concerned that the draft Code de l’enfant, as finalized in 2001, still contains a number of discrepancies with the Convention. While noting the revision under way of the Code de l’enfant, the Committee recommends that the State party: (a) Revise, as a matter of priority, domestic law and especially the draft Code de l’enfant through a participatory process, involving various ministries, children, civil society and international agencies in order to ensure full compliance with the Convention; (b) Following such revision, ensure speedy adoption and implementation of the revised Code; (c) Working together with the different districts, undertake a comprehensive review of the existing legislation in order to identify areas where legal reform is required to bring all laws into full conformity with the Convention.

Trinidad & Tobago
While welcoming the set of legislation enacted in 2000 to harmonize the domestic laws with the Convention, the Committee is deeply concerned that these laws have not entered into force, except for the Miscellaneous Provisions (Children) Act (No. 66 of 2000). The Committee recommends that the State party take all appropriate measures to have these laws promulgated and to facilitate their speedy entry into force.627

Tunis
The Committee welcomes the adoption of the Child Protection Code as well as other legal provisions in the area of juvenile justice. However, the Committee is concerned at the failure of the State party to guarantee full implementation of all provisions (e.g. the fact that juvenile courts have not yet been established), in light of reports of detention and ill-treatment of children, as well as detention of juveniles with adults which has allegedly resulted in sexual abuse or other ill-treatment. The Committee recommends the full implementation of the legislation governing the juvenile justice system, in accordance with articles 37, 40 and 39 and all other relevant provisions of the Convention, as well as other relevant international standards in this area, such as the Beijing Rules, the Riyadh Guidelines, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the Vienna Guidelines for Action on Children in the Criminal Justice System.628

Turkmenistan
The Committee, while welcoming the fact that recent legislative reforms have expanded the protection of the rights of children, is concerned at inconsistencies and discrepancies in the national legislation, especially in the area of adoption and guardianship, and that the implementation of this legislation is not always adequate. Furthermore, while noting the Rights of the Child (Guarantees) Act of 5 July 2002, it is concerned that this Act does not cover all rights protected under the Convention. The Committee recommends that the State party: (a) Improve and harmonize its legislation in order to achieve compliance with the principles and provisions of the Convention; (b) Review the Rights of the Child (Guarantees) Act of 5 July 2002 so that it covers all the rights enshrined in the Convention; (c) Provide all the necessary means for an effective implementation of its legislation, including appropriate budgetary resources and monitoring mechanisms; (d) Take into account the Committee's general comment No. 5 (2003) on General

624 CO: Paraguay. 06/11/2001.CRC/C/15/Add.166. Para. 10
627 CO: Trinidad & Tobago. 17/03/2006. CRC/C/TTO/CO. 2. Paras. 10 & 11.
<table>
<thead>
<tr>
<th>Country</th>
<th>Measures Taken</th>
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<tr>
<td>Uzbekistan</td>
<td>The Committee notes the efforts on legislative reform made by the State party, such as the review of existing legislation on the Office of the Ombudsperson and various bills prepared by the National Human Rights Centre (e.g., the draft law on the Guarantees of the Rights of the Child), but it is concerned at the lack of enactment of new laws. The Committee recommends that the State party complete as soon as possible the current legislative efforts with a view to bringing the law into compliance with the provisions of the Convention (e.g., by adopting the law on the Guarantees of the Rights of the Child), thereby ensuring that the principles and the provisions of the Convention are fully integrated in the laws of the State party.</td>
</tr>
<tr>
<td>Maldives</td>
<td>The Committee expresses its concern regarding the need to harmonize fully the Law on the Protection of the Rights of the Child (Law No. 9/91) and other domestic legislation with the principles and provisions of the Convention, taking into account its holistic nature. The Committee is concerned at the lack of clarity on the status of children aged between 16 and 18 years. In this regard, it is especially concerned by the low minimum ages for marriage and criminal responsibility. The Committee recommends the State party to engage in a comprehensive reform of its legislation, with a view to ensuring its full conformity with the principles and provisions of the Convention.</td>
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<tr>
<td>Mexico</td>
<td>While welcoming the measures taken to bring national legislation into conformity with the Convention and with other international standards, the Committee is concerned at the lack of effectiveness of the measures taken to implement the rights contained in the Convention and to allow rights holders to claim them. It is also concerned that not all national legislation is in full conformity with the Convention, including the substantive and procedural civil codes that do not give children the opportunity to be heard by judicial authorities. It is also concerned at the complexity of implementation due to the federal structure of the State party, which may result in new legislation not being fully implemented in practice at the state level. In particular, a number of laws, such as the Act on the Protection of the Rights of Children of 2000, have yet to be fully integrated into state laws. The Committee urges that the State party take all necessary measures to ensure that all federal and state legislation is harmonized with the Convention and relevant international standards thus ensuring their effective implementation. The Committee also urges that the State party ensure that all state laws be adjusted to the federal laws, in particular the Act on the Protection of the Rights of Children of 2000, and that all states implement as a matter of priority the necessary administrative and institutional reforms.</td>
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<tr>
<td>Venezuela</td>
<td>With regard to the entry into force of the Organic Law for the Protection of Children and Adolescents (Ley Organica para la Protección de Niños y Adolescentes), while noting the measures taken by the State party in preparation for the implementation of this law, the Committee remains concerned about the lack of a comprehensive plan, including the required financial and human resources, and the administrative reform necessary for the full implementation of this legislation. In this regard, the Committee recommends that the State party give priority to the process of implementation of the new Organic Law for the Protection of Children and Adolescents. The Committee further recommends that the State party take effective measures, including the allocation of sufficient levels of resources, both financial and human, for the full implementation of this legislation.</td>
</tr>
<tr>
<td>Yemen</td>
<td>While welcoming the legislative measures, notably the promulgation of the Rights of the Child Act No. 45 of 2002, which has been undertaken by the State party in order to ensure the implementation of the Convention, the Committee remains nonetheless concerned that the existing legislation in the State party does not fully reflect the principles and provisions of the Convention, e.g., regarding the definition of the child, family law and the administration of juvenile justice.</td>
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629 Turkmenistan. 02/06/2006. CRC/C/TKM/CO/1. Paras. 5-6.
630 Uzbekistan. 02/06/2006. CRC/C/UZB/CO/1. Paras. 6-7.
631 CO: Maldives. 05/06/98. CRC/C/15/Add.91. Paras 7-26.
Appendix 4: Model Provisions on Inter-Agency Collaboration

A Case Study of Latvia

Chapter X: Organisation of the Protection of the Rights of the Child

Section 61: Competence of the Cabinet within the Sphere of the Protection of the Rights of the Child

The Cabinet:

1. shall formulate relevant draft laws and issue the necessary regulations in regard to the protection of the rights of the child;
2. shall approve the annual programme for the improvement of the status of children in the State;
3. shall establish an interministerial commission for the protection of the rights of the child, involving therewith organisations for the protection of the rights of the child and local governments or their public organisation representatives; and
4. shall approve a State programme for the preparation of social educators and social workers.

Section 62: Competence of the Ministry of Welfare

The Ministry of Welfare:

1. shall formulate State policy projects for child and family social security, including social insurance, social assistance (social care, social rehabilitation, material assistance), health care and medical rehabilitation, and in the sphere of adolescent employment shall co-ordinate the realisation of these projects and be responsible for their implementation;
2. shall provide medical and social rehabilitation for children who have suffered from violence or other illegal acts;
3. shall ensure the receipt of medical rehabilitation and technical aids, and shall develop the State institutional and alternative care and rehabilitation service network for children with special needs;
4. shall administer the methodology of the work of institutions for extra-familial care for children;
5. shall supervise and administer the methodology of the work of the Orphans’ Court (parish court) in questions of guardianship; and
6. shall ensure the carrying out, from State budgetary resources, of public procurement regarding the preparation of social workers and social educators.

Section 63: Competence of the Ministry of Education and Science

The Ministry of Education and Science:

1. shall formulate State policy projects in the sphere of child education and sports and organise the implementation of approved projects;
2. shall ensure accessibility and quality of education, and integration into society for children with special needs and children who have suffered from violence or other illegal acts, from the use of narcotic, toxic and other intoxicating substances or alcohol or the effects of a negative social environment;
3. shall formulate educational programmes in the sphere of protection of the rights of the child;
4. shall ensure that health studies are introduced in schools as a compulsory subject;
5. shall determine the qualifying requirements and criteria to be met by workers in education, and shall promote the raising of the qualification level of workers in education;
(6) in conjunction with the Ministry of Welfare, shall formulate the State programme for the
preparation of social workers, social educators and teachers for work with children with
special needs and children who require social and pedagogical correction of behaviour, and
with the families of such children, and shall co-ordinate the realisation of State programmes;
and
(7) shall formulate a State draft policy in the sphere of protection of the rights of the child.
(8) The National Centre for the Protection of the Rights of the Child shall be under the
supervision of the Ministry of Education and Sciences.

Section 64: Competence of the Ministry of the Interior

The Ministry of the Interior:

(1) shall formulate and realise programmes for the prevention of child crime, as well as
programmes for the protection of the child from crime;
(2) in collaboration with other authorities shall carry out measures in the fight against illegal
relocation of children across the State border and non-return of children from foreign states;
and
(3) shall ensure special training for police officers for work with law-breakers who are minors
and minors who are victims of criminal offences, and with their families.

Section 64.1: Competence of the Ministry of Justice

The Ministry of Justice:

(1) shall organise the training of judges with respect to issues regarding the rights of the child.
(2) shall ensure that court work is organised so that priority consideration shall be applicable in
the adjudication of matters associated with the protection of the rights and the best interests of
the child.

Section 64.2: Competence of the Ministry of Culture

The Ministry of Culture:

shall formulate the State programme in the sphere of culture and education regarding culture and shall
be responsible for its realisation.

Section 64.3: Competence of the Office of the Prosecutor General

The Office of the Prosecutor General:

shall organise training for prosecutors with respect to issues regarding the rights of the child and shall
ensure that the rights of the child are observed during pre-trial investigations.

Section 65: National Centre for the Protection of the Rights of the Child

The National Centre for the Protection of the Rights of the Child:

(1) shall formulate proposals for State policy projects in the sphere of the protection of the rights
of the child and an annual State programme project for the improvement of the condition of
children, and shall be responsible for the realisation of the approved projects;
(2) shall supervise the observance of laws and other regulatory enactments in the sphere of
protection of the rights of the child and shall formulate proposals for the amendments to
regulatory enactments necessary for ensuring protection of the rights of the child;
(3) shall co-ordinate the activities of State and local government institutions and shall supervise and analyse the quality of the process for protecting the rights of the child in the sphere of protection of the rights of the child;
(4) shall submit once semi-annually to the Saeima and the Cabinet a written report regarding the work of the Centre and an account regarding the status of children in the State;
(5) shall prepare once every five years a report regarding the status of children in Latvia and measures that have been taken for ensuring the rights of the child for submission to the United Nations Committee on the Rights of the Child regarding the status of children in Latvia and the measures that have been carried out to ensure the rights of the child.

Section 66:  Competence of Local Governments in Regard to Protection of the Rights of the Child

Parish and city local governments shall analyse the situation in the sphere of observance of the rights of the child, and shall formulate and realise a protection programme for the rights of the child in the administrative territory of the city or the parish.

In conformity with the law, the local government:

(1) shall provide assistance and support to families in which there are children, guaranteeing shelter, warmth and clothing, and nutrition appropriate to his or her age and state of health, for each child residing in the local government territory;
(2) shall ensure extra-familial care for those children, who for a time or permanently are without their own family, or who for their own best interests may not be left in their own family.
(3) shall ensure the rights of the child to acquire a general secondary education and provide children with assistance in vocational training;
(4) shall organise primary health care for mothers and children;
(5) shall organise parental education;
(6) shall provide for primary schools and extracurricular child institutions, public libraries, and organisation of child recreation; and shall carry out other measures ensuring the rights of the child.

Section 67:  Delimitation of the Competence of Local Governments

(1) The district and local government according to the residence of a child shall be responsible for the protection of the rights of the child. The local government of the parish (city) shall keep a record of every child residing in its territory.
(2) The residence of the parents of a child shall be considered the residence of the child.
(3) If the parents of a child reside in different administrative territories, the residence of the mother shall be considered the residence of the child, provided that it has not been determined pursuant to a court judgment that the child is to reside with the father or the parents have not agreed in regard to this.
(4) During the period that a child is located in extra-familial care, the permanent residence of the child shall remain in the administrative territory of the local government which has taken the decision regarding extra-familial care.
(5) In cases where a child is found in conditions hazardous to the life or health of the child, assistance shall be provided by local government and State institutions according to where the child is located. Lack of secure housing, warmth and clothing, and nutrition appropriate to the age and the state of health of the child, and violence against the child, shall be considered conditions hazardous to the life and health of the child.
(6) If a child alone, or together with his or her parents, is located in a temporary residence, assistance and support shall be provided for the child by local government institutions in accordance with the temporary residence.
(7) The procedures for mutual set-offs by local governments with regard to provision of social assistance in the cases provided for in Paragraphs four and five of this Section shall be determined by the Law On Social Assistance.

(8) If the guardian or the family, in whose care an orphan or a child left without parental care has been placed, does not receive the maintenance expenditures or social assistance provided for by law, assistance for the child shall be ensured without delay from State budget resources, pending the taking of a decision by the relevant local government. The resources paid out of the State budget shall be collected from the local government according to the residence of the child.

Section 67.1: Informative Statistical Reports Regarding the Status of the Rights of the Child

The Ministry of the Interior, the Ministry of Education and Science, the Ministry of Welfare, the Ministry of Justice, the Minister for Special Assignments – State Administration and Local Government Reform Matters and local governments shall ensure statistical surveys in regard to the protection of the rights of the child in the State, and of families, regarding whom parental authority has been terminated or suspended or who together with children have been evicted from their dwellings, regarding child adoption, placing of children in extra-familial care, the application of compulsory measures of an instructional or medical nature to children, children being held to criminal liability, and children who have become victims of violence, and the submission of an appropriate summary report to the Central Statistics Bureau. The Central Statistics Bureau shall annually compile the information referred to and submit it to the National Centre for the Protection of the Rights of the Child.
Appendix 5: Model Provisions on a Child Friendly Court from Goa

Section 32: Procedure of the Children’s Court

(1) The Children’s Court shall follow such procedure as may be prescribed:
Provided that the procedure so prescribed shall be child friendly and shall be deemed to include the following:
(c) Avoidance of harm: At all stages, from the initial contact till disposition, extreme care shall be taken to avoid any harm to the sensitivity of the child.
(d) Principle of Best interest: This principle seeks to ensure physical, emotional, intellectual, social and moral development of the child, so as to make him a useful and good citizen by ameliorating the impediments to healthy development.
(e) Principle of non-stigmatizing semantics, decisions and actions: Non-stigmatizing semantics must be strictly adhered to, and the use of adversarial or accusatory words, such as, arrest, remand, accused, charge sheet, trial, prosecution, warrant, summons, conviction, inmate, delinquent, neglected, custody, etc., is prohibited in the processes pertaining to the child under this Act.
(f) Principles of non-waiver of rights: No waiver of rights of the child, whether by himself or the competent authority or anyone acting or claiming to act on behalf of the child is either permissible or valid. Non-exercise of a fundamental right does not amount to waiver.
(h) Principle of equality: Equality of access, equality of opportunity, equality under the said Act, is guaranteed to the child; and as such there shall be no discrimination on the basis of age, sex, place of birth, disability, race, ethnicity, status, caste, cultural practices, work, activity or behaviour of the child or that of his parents or guardians, or the civil and political status of the child.
(i) Principle of right to privacy and confidentiality: The child’s rights to privacy and confidentiality shall be protected by all means and through all stages of the proceedings.
(j) Principle of Fresh Start: The principle of fresh start promotes new beginning for the child by ensuring erasure of his past records.
(k) Principle of last resort: Institutionalization of a child will be the last resort after reasonable enquiry and that too for the minimum possible duration.
(l) Burden of Proof: Whenever any offence is alleged to have been committed against a child, the burden of proving that such offence has not been committed by the accused shall lie on the accused.
(m) Procedure for Children’s evidence: Whenever a child who is a victim of a crime is required to depose before any authority including this Court, the child shall not be exposed to the presence of the accused or the perpetrators of the crime.
(n) Cross examination of child witness: Whenever there is a need to cross examine a child witness, care shall be taken to see that the tender age or in case of a victim, the psychological condition of the child is taken into consideration and the Children’s Court may adopt such procedures which are fair and suitable to the child.
(o) Deposit of fine prior to trial: Whenever the offence alleged involves a fine, in order to ensure the attendance of the accused during the proceedings and compliance of the Court’s directives and others thereafter, the Court may direct the accused to deposit 75% of the maximum fine leviable for that offence at the beginning of the trial itself.
(2) In all dealings with children, the Children’s Court shall follow the following guidelines:
(a) Child victims/witnesses are informed of their role in regard to court proceedings;
(b) Their views are allowed to be heard and respected;
(c) Inconvenience to them is minimized and their privacy is respected;
(d) Delays in the proceedings are reduced;
(e) Aggressive questioning or cross examination of child victims is avoided and the same, if necessary, is done through the judge;
(f) Provisions are made for trials in camera;
(g) The identity of the child victim is protected;
(h) Child victims are prepared for the judicial process and prosecution of alleged abusers is not rushed if a child is not ready to go to court;

(i) The investigator ascertains the need for medical examination of the child victim and when examination is undertaken, ensures that multiple re-examination is avoided;

(j) The medical examination should be conducted in the presence of the parent/guardian and social worker/counsellor as far as possible;

(k) Child’s testimony should be recorded in the presence of a social worker/counsellor as early as possible after the abusive incident with other witnesses at hand;

(l) Adequate translation/ interpretations and translators/ interpreters who are sensitive to the children’s needs should be provided wherever needed.

(m) In case of a mentally challenged child, the competent service provider should depose on behalf of the child;

(n) The special needs of the child victims/witnesses should be catered for. These should include the following:-

(i) Enable children to familiarise themselves with the court surroundings;

(ii) Inform children of the different roles of the key persons at court, such as the judge, the defence lawyer and the prosecutor;

(iii) Inform the court of the special needs of children in general and of individual children in specific cases;

(iv) Help children to be comfortable in the proceedings;

(v) Encourage questionings to be short and clear so as not confuse child witnesses;

(vi) Permit children below eight years of age to respond to leading questions facilitated by a social worker.
Appendix 6: Model Provisions on Children in Need of Protection from Kenya

Section 119: When a child is in need of care and protection

(1) For the purposes of this Act, a child is in need of care and protection—
(a) who has no parent or guardian, or has been abandoned by his parent or guardian, or is destitute; or
(b) who is found begging or receiving alms; or
(c) who has no parent or the parent has been imprisoned; or
(d) whose parents or guardian find difficulty in parenting; or
(e) whose parent or guardian does not, or is unable or unfit to exercise proper care and guardianship; or
(f) who is truant or is falling into bad associations; or
(g) who is prevented from receiving education; or
(h) who, being a female, is subjected or is likely to be subjected to female circumcision or early marriage or to customs and practices prejudicial to the child's life, education and health; or
(i) who is being kept in any premises which, in the opinion of a medical officer, are overcrowded, unsanitary or dangerous; or
(j) who is exposed to domestic violence; or
(k) who is pregnant; or
(l) who is terminally ill, or whose parent is terminally ill; or
(m) who is disabled and is being unlawfully confined or ill treated; or
(n) who has been sexually abused or is likely to be exposed to sexual abuse and exploitation including prostitution and pornography; or
(o) who is engaged in any work likely to harm his health, education, mental or moral development; or
(p) who is displaced as a consequence of war, civil disturbances or natural disasters; or
(q) who is exposed to any circumstances likely to interfere with his physical, mental and social development; or
(r) if any of the offences mentioned in the Third Schedule to this Act has been committed against him or if he is a member of the same household as a child against whom any such offence has been committed, or is a member of the same household as a person who has been convicted of such an offence against a child; or
(s) who is engaged in the use of, or trafficking of drugs or any other substance that may be declared harmful by the Minister responsible for health.

(2) A child apprehended under this section shall be placed in separate facilities from a child offenders' facilities.

(3) The provisions of this section shall be in addition to, and not in derogation of, those of the Penal Code in relation to offences involving children, or the Employment Act in relation to safeguards for working children.
Appendix 7: Model Provisions on Keeping the Child within the Family Environment from Latvia

Section 26: State and Local Government Assistance to the Family

(1) The family is the natural environment for the development and growth of a child and every child has the inalienable right to grow up in a family. The State and local governments shall support the family and provide assistance to it.

(2) If the relationship of the parents with their child does not ensure a favourable environment for the development of the child or if the child is chronically ill, the local government shall assist the family, providing consultations with a psychologist, social counsellor or other specialist, and shall appoint a support family or support person for the child, who shall assist in stabilising the relationship between parents and child.

(3) Depending on the age of a child, the local government shall assist the family, particularly, a family in need, in the upbringing and education of the child, in vocational training and in finding employment and housing.

(4) The State and local governments shall provide support to child and family educational, health maintenance, cultural, sports and recreational institutions and organisations, in order to promote physical development and creative activities of a child; provide opportunities for spending free time for a child; and provide other services as will promote full development of a child and assist the family in the upbringing of a child.

Section 27: Separation of Child from Family

(1) A child may be separated from his or her family, if:
   1) the life, health or development of the child is seriously threatened by lack of care or due to the circumstances of his or her home (social environment);
   2) the child is seriously threatening his or her health or development by using alcohol, narcotic or toxic substances; or
   3) the child has committed a criminal offence.

(2) In the cases provided for in Paragraph one, Clauses 1 and 2 of this Section, a child shall be separated from the family if it is not possible to allay the circumstances unfavourable to the development of the child if he or she remains in the family.

(3) In separating a child from his or her family, extra-familial care shall be ensured for the child with a guardian, a foster family or in a childcare and instructional institution, as well as free-of-charge emergency care in hospitals and rehabilitation institutions.

(4) If extra-familial care is ordered in connection with the circumstances referred to in Paragraph one, Clause 1 of this Section:
   1) the children from one family shall not be separated except in special cases where it is done in the best interests of the children; and
   2) in selecting the form of extra-familial care, the point of view of the child shall also be taken into account.

(5) In such cases the local government social assistance service together with other local government authorities, the parents of the child and institutions for the protection of the rights of the child shall formulate a programme of support and assistance for the family.
Appendix 8: Model Provisions on the Principles of Justice Administration from New Zealand

PART 4: Section 208.

Subject to section 5, any Court which, or person who, exercises any powers conferred by or under this Part or Part 5 or sections 351 to 360 shall be guided by the following principles:

(a) the principle that, unless the public interest requires otherwise, criminal proceedings should not be instituted against a child or young person if there is an alternative means of dealing with the matter:

(b) the principle that criminal proceedings should not be instituted against a child or young person solely in order to provide any assistance or services needed to advance the welfare of the child or young person, or his or her family, whanau, or family group:

(c) the principle that any measures for dealing with offending by children or young persons should be designed---

(i) to strengthen the family, whanau, hapu, iwi, and family group of the child or young person concerned; and

(ii) to foster the ability of families, whanau, hapu, iwi, and family groups to develop their own means of dealing with offending by their children and young persons:

(d) the principle that a child or young person who commits an offence should be kept in the community so far as that is practicable and consonant with the need to ensure the safety of the public:

(e) the principle that a child's or young person's age is a mitigating factor in determining---

(i) whether or not to impose sanctions in respect of offending by a child or young person; and

(ii) the nature of any such sanctions:

(f) the principle that any sanctions imposed on a child or young person who commits an offence should---

(i) take the form most likely to maintain and promote the development of the child or young person within his or her family, whanau, hapu, and family group; and

(ii) take the least restrictive form that is appropriate in the circumstances:

(g) the principle that any measures for dealing with offending by children or young persons should have due regard to the interests of any victims of that offending:
(h) the principle that the vulnerability of children and young persons entitles a child or young person to special protection during any investigation relating to the commission or possible commission of an offence by that child or young person.
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