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**The World Organisation against Torture (OMCT)  
in partnership with  
the Mannerheim League for Child Welfare**

and with the support of the  
**Office of the High Commissioner for Human Rights**

International Conference on

**Children, torture and other forms of  
violence:  
Facing the facts, forging the future**

**27 November – 2 December 2001**

**TAMPERE, FINLAND**

**Outcome document**

**With the support of the European Union**



**the Government of Finland**



**and the Agence Intergouvernementale de la Francophonie**

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## The Tampere Declaration

The “International Conference on Children, Torture and Other forms of Violence: Facing the Facts, Forging the Future” brought together 183 participants from 73 countries in all regions, representing a wide range of international and national NGOs, other organizations and observers from governments and international governmental organizations,

We reaffirm our commitment to continue our struggle to eliminate all forms of violence and torture against children and to create a world that protects and fulfills all rights of children.

Violence against children (all persons under 18), both girls and boys, encompasses all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, and includes, inter alia, sexual abuse, harmful traditional practices, trafficking, exploitation, bullying in schools and corporal punishment.

Violence against children demands immediate and effective action because of their inherent vulnerability. Violence kills and maims millions of children globally, and inhibits and undermines every aspect of a child’s development.

Violence is perpetrated against children in both private and public settings – their families, communities, detention centers, schools and other institutions – by parents, caregivers, educators, employers, peers, armed groups, and state officials of all kinds. Whatever the setting, the state has ultimate responsibility for deterring violence and providing effective protection and remedies, including early assistance and support to children after trauma.

Preventing and eliminating violence against children has huge potential for creating a society free of violence and favorable to a culture of human rights.

We the participants present –

Concerned that in many countries and regions there is still widespread social and cultural acceptance of violence against children and that widespread impunity allows such violence to continue,

Concerned about structural causes of violence against children including the denial of social, economic and cultural rights, which is exacerbated by globalization and resulting in increased poverty and inequality,

Recognize that the Convention on the Rights of the Child and other international standards affirm children’s status as holders of human rights. These include the right to respect for human dignity and physical and psychological integrity and to equal protection under the law, without any form of discrimination.

Recognize the special competence and abilities of children and affirm that all children have the right to be active participants in identifying, preventing and addressing all forms of violence suffered by them,

Note the necessity to strengthen existing mechanisms to address violence, establish new mechanisms, provide them with adequate and sustainable funding, and take greater efforts to mainstream children’s rights across international, regional and national systems,

Welcome the strong advocacy by the Committee on the Rights of the Child for protection of children from all forms of violence, through its reporting process, general discussion days and other activities,

Welcome the request of the General Assembly that the Secretary-General conduct an in-depth international study on the issue of violence against children, as recommended by the Committee on the Rights of the Child.

We the participants present,

Agree on the following recommendations and urge that every effort is made to ensure they are widely known, respected and implemented.

We recommend:

To the United Nations and UN-related bodies:

1. That the UN Commission on Human Rights appoint a Special Rapporteur on Violence against Children in order to, inter alia, solicit, receive and exchange information and communications, including individual complaints and on systematic violations, from all relevant sources, including from children themselves, on any form of violence or ill-treatment they may be subjected to, as well as its causes and consequences; to undertake investigations; and to take appropriate, including urgent actions. The Special Rapporteur should, as part of his or her work, interact with all relevant UN mechanisms, with relevant regional bodies and with national and international NGOs, and seek the views of children.
2. That the UN Secretary-General appoint an internationally-respected independent expert to head a well-qualified team to conduct the in-depth international study on violence against children requested by the UN General Assembly, and that the study be conducted in line with the recommendations set out by the Committee on the Rights of the Child, consulting all relevant sources including children;
3. That the Committee on the Rights of the Child produce General Comments on the provisions relating to children and violence in the Convention on the Rights of the Child, in particular articles 19 and 37, taking into account the special vulnerability of children to torture and other forms of violence, and that violence may affect different children in diverse ways, depending on factors including age, sex, and disability, and underlining states parties' obligations to prevent and remedy such violations;
4. That UN agencies and related bodies support the preparation and implementation of the international study on violence against children by providing staff, logistical and other support;
5. That the UN Mechanisms should mainstream the rights of the child within the scope of their activities;
6. That the Office of the High Commissioner on Human Rights organize with urgency a special workshop for existing UN mechanisms to address ways to more effectively address violence against children within their work, as recommended by the Committee on the Rights of the Child during its 28th session, and to enhance coordination amongst themselves;
7. That the UN Commission on Human Rights consider issues of violence against children as part of all relevant resolutions, in addition to the resolution on the rights of the child;

8. That the UN General Assembly Special Session on Children make a firm commitment to end all violence against children, with attention to the particular situation of girls, and adopt a clear plan of action to eliminate such violence, in accordance with the Convention on the Rights of the Child and other international human rights instruments and implement the plan within the same decade;
9. That resources available to the Committee on the Rights of the Child and relevant special mechanisms be increased to enable them to more effectively carry out their work.

To States, that they:

10. Ratify and fully and systematically implement all international and regional human rights and humanitarian instruments relevant to violence against children in all areas under their jurisdiction, and incorporate the same within domestic legislation;
11. Review, enact and amend as necessary all laws to prevent and prohibit torture and all forms of violence against children;
12. Take immediate measures to reform and to ensure the practical implementation of domestic laws and mechanisms, so as to ensure that child victims obtain justice and redress;
13. Provide adequate reparation, rehabilitation and reintegration of child victims in accordance with international and regional instruments, taking into account the differing circumstances and needs of child victims;
14. Establish or enhance effective monitoring bodies for the implementation of domestic legislation;
15. Cooperate with all international monitoring and fact-finding missions;
16. Implement the recommendations of the Committee on the Rights of the Child and other treaty bodies in their concluding observations to periodic reports;
17. Identify all forms of violence against children and develop a national plan of action to end all forms of violence against children, in collaboration with civil society, including children;
18. Establish and strengthen juvenile justice systems that eliminate violence and meet international standards;
19. Implement international human rights instruments concerning child slavery, child labour, trafficking in children, abduction, as well as humanitarian instruments protecting children in armed conflicts;
20. Conduct research and studies and implement training programmes for all government officials in collaboration with civil society bodies, including NGOs;
21. Take all necessary measures to create an environment conducive to prevent violence against children through, inter alia, institutions, media, and education;
22. Eradicate all customary and traditional practices that constitute violence against children, are detrimental to the child's development or perpetuate violence against children, with special attention to girls;

23. Address structural causes of violence against children, inter alia, by allocating sufficient resources to ensure adequate nutrition, shelter, education and health care;
24. Promote and support community-based and local mechanisms for combating violence against children;
25. Empower children for effective participation in prevention and protection against violence through provision of resources at all levels;
26. Cooperate with other states to prevent and eradicate all forms of violence against children, including by providing resources and technical cooperation;
27. Allocate adequate resources to ensure the effective functioning of UN mechanisms dealing with children and the successful completion of the in-depth UN study on violence against children.

Adopted in Tampere, Finland, the 30<sup>th</sup> day of November, 2001.

# Final recommendations and regional plans of action

## 1. Final Recommendations

Under article 2(1) of the Convention, States Parties must not only respect, but also ensure the rights set forth in the Convention. Article 3(2) details this obligation by stating that “States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures”.

This means that the State must be held responsible not only for intentional acts, but also for negligence, including, as stated in this article and article 19, the failure to take all appropriate measures to protect the child from violence.

Obligation of due diligence implies that States Parties must examine the adequacy and implementation of legal safeguards to address and counter torture or other cruel, inhuman or degrading treatment or punishment when perpetrated by private individuals. Due diligence imposes various positive measures that States Parties must adopt in conformity with the Convention on the Rights of Child. Such measures include the obligations to prevent, to stop, to investigate and to punish acts of violence, as well as to provide adequate compensation and to promote recovery and reintegration of the victim.<sup>1</sup>

The following recommendations are aimed at defining more precisely States’ positive obligations regarding violence against children. Some are general, since they apply to all forms of violence (a). Others are tailored to fight against specific forms of violence occurring in specific places (b).<sup>2</sup>

### a) General recommendations

Legislative (and other) measures

1. to adopt all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical, sexual and mental violence, including corporal punishment, while in detention centres, in the family, at the workplace, in schools, in other institutions and in the community ;
2. to adopt and implement national policy plans of action to end all forms of violence against children, including educational programmes, particularly for parents and caregivers ;
3. to adopt and implement social programmes to provide necessary support for the child and for those who have the care of the child as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment (article 19 par. 2 CRC) ;
4. to involve children in the designing of strategies and solutions to reduce and eliminate violence, in particular in the school environment, such as the adoption of anti-bullying and anti-violence policies;

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<sup>1</sup> See art. 19 par. 2 and 39 of the Convention on the Rights of the Child.

<sup>2</sup> This set of recommendations is based and aims at complementing the recommendations by the Committee on the Rights of the Child on the occasions of the two general discussion days on violence against children in 2000 and 2001 (Day of General Discussion on “State Violence Against Children”, Friday, 22 September 2000 and Day of General Discussion on “Violence Against Children, Within the Family and in Schools”, 28<sup>th</sup> Session (CRC/C/111) Friday, 28 September 2001, unedited report and recommendations) and/or in its concluding observations to State Parties.

5. to give appropriate attention in all measures to discrimination issues in preventing and responding to violence against children;

#### Monitoring

6. to ensure the establishment and effective functioning of systems to monitor the treatment received by children and to report and investigate cases of suspected ill-treatment in detention centres, in the family, at the workplace, in schools, and other institutions, including, *inter alia*, the establishment of help lines or points of contact and ombudspersons;
7. to ensure that children receive legal advice and assistance;

#### Investigations and sanctions

8. to properly investigate cases of violence against children through a child-sensitive judicial procedure, giving appropriate weight to children's views in legal proceedings and ensuring that the abused child is not victimised in legal proceedings;
9. to adopt enforcement measures, including penal sanctions, ensuring the accountability of perpetrators, and where the perpetrators are children, to ensure that procedures are in accordance with international standards on juvenile justice;

#### Reparation and reintegration

10. to enact legislation to provide reparation for victims, including compensation and rehabilitation, that is adequately tailored to individual context and circumstances;
11. to establish and strengthen programmes for the reintegration of children victims of violence;
12. Awareness raising to collaborate with the media in awareness-raising campaigns, as well as in violence propaganda prevention programmes;
13. to raise awareness in order to bring about change in cultural attitudes on the protection of children from violence, including public campaigns to promote positive, participatory, non-violent forms of discipline as an alternative to corporal punishment in detention centres, in the family, at the workplace, in schools, and other institutions;
14. to include information about rights to protection from violence in school curricula;
15. to train teachers, law enforcement officials, social workers, and other professionals in the identification, reporting and management of cases of violence against children;

#### Staff capacity

16. to make every effort to ensure, in recruiting staff to care for children in detention centres, in juvenile courts, in the family, at the workplace, in schools, and other institutions, that due attention is given to the need to ensure the capacity of staff to make effective use of non-violent methods of discipline;

#### International cooperation

17. to cooperate with other states to prevent and eradicate all forms of violence against children, including by providing resources and technical cooperation;

#### Funding

18. to allocate adequate resources to ensure the effective prevention and eradication of all forms of violence.

### **b) Specific recommendations**

#### *Violence against children within the juvenile justice system*

As general rule applicable to children deprived of their liberty, art. 37 of the Convention on the Rights of the Child states:



“States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action”.

Article 40 (1) also states that:

“States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society”.

The UN Rules for the Protection of Juveniles Deprived of their Liberty<sup>3</sup> detail States' obligations regarding child detention with respect to the following aspects:

- Children under arrest or awaiting trial
- Detention records
- Admission, registration, movement and transfer
- Physical environment and accommodation
- Recreation
- Medical care
- Physical restraints and the use of force
- Disciplinary procedure
- Qualification of the detention personnel

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<sup>3</sup> United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted by General Assembly resolution 45/113 of 14 December 1990.

### *Violence in child institutions*

1. to prevent institutionalisation of children through, *inter alia*, the provision of appropriate care and assistance to children, support to their families and legal guardians in their child-rearing responsibilities (art. 18 (2) of the CRC) and home visits by social workers;
2. to increase and strengthen foster care, family-type foster homes and other family-based alternative care, and place children in institutions only as a last resort and for the shortest possible time;
3. to ensure that institutionalisation of children, when unavoidable, takes place in small child-friendly institutions, such as a home-type environment;
4. to prohibit all forms of physical and mental violence, including corporal punishment, within care institutions;
5. to ensure the right of the child to stay in contact with his or her family, when appropriate, and to avoid the isolation of children in institutions, for example, by ensuring that education, recreation, or health services are provided outside the institution;
6. to ensure that institutions provide the type of environment children need, not only for survival, but also for development, including psychological, mental, spiritual, moral, and social development, in a manner compatible with human dignity and to prepare the child for an individual life in a free society, in accordance with article 6 of the Convention;
7. to ensure that institutions adopt anti-bullying and anti-violence strategies and policies;
8. to establish a code of standards to ensure that children deprived of a family environment receive adequate care and protection;
9. to provide support and training for personnel in institutions, including in children's rights, taking into account that a lesser number of better trained professionals can provide more appropriate care to children than a large number of poorly trained or untrained workers;

### *Violence in the school*

1. to engage teachers unions to jointly construct codes of conduct and good practices for discipline without violence;
2. to involve parents and students in school governing processes, including in drawing up the rules and monitoring of discipline;
3. to address the availability or tolerance of weapons and of substance abuse in the school environment;
4. to ensure the establishment and effective functioning of systems to monitor the treatment received by children, including, *inter alia*, unannounced visits, full access to facilities and records, investigation of incidents of violence, and independent external complaints mechanisms;

### *Violence in the family*

1. to give appropriate attention to the different patterns of family abuse and vulnerability and effective measures for different age, gender and socio-economic groups, taking into particular account disabled children;
2. to provide appropriate assistance and training to parents, caregivers and legal guardians in their child-rearing responsibilities, including all forms of family violence, including quality prenatal, perinatal and early childhood health services to improve early attachment;
3. to raise the minimum age for marriage to 18 for both boys and girls and develop programs to end the practices of early and forced marriage;
4. to adopt legislation to prohibit the practice of female genital mutilation and implement educational programs to end this practice;
5. to provide legal and accessible sex education and sexual and reproductive health care.
6. to facilitate, *inter alia* and when appropriate, the reunification of child victims with their families and provide adequate care and rehabilitation for them;

7. to provide a proper alternative placement for child victims of family violence, when it is in the best interest of the child;
8. to seek assistance from UNICEF and WHO in this regard;
9. to take advantage of the efforts in this regard made by other States in the region.

#### *Sexual violence and related child trafficking*

Detailed obligations regarding sexual violence and trafficking are embodied in the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, entered into force on 18 January 2002, the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the UN Convention against transnational organized crime and adopted on 15 November 2000, as well as in the Stockholm Agenda for Action of 28 August 1996 and the Yokohama Global Commitment of 20 December 2001.

These include *inter alia* the following issues:

- Preventive measures, through education, training, information and other forms of awareness raising, health services and monitoring mechanisms;
- Cooperation at national and international levels;
- Criminal proceedings against perpetrators, including service providers, customers and intermediaries in child prostitution, child trafficking and child pornography;
- Assistance and protection programmes accessible to child victims;
- Recovery and reintegration of child victims through, *inter alia*, social, medical, psychological and other support, effective actions to prevent or remove social stigmatisation and legal criminalisation, and the promotion of alternative means of livelihood.

#### *Child slavery, bonded labour, and child trafficking related to it*

The overall international standards on child labour are ILO Convention 138, 146 and 182, as well as Recommendation 190 concerning the prohibition and immediate action for the elimination of the worst forms of child labour. Given the close linkage between the incidence of child labour and violations of the rights of adult workers, child labour standards must be taken in the broader context of the ILO Declaration on Fundamental Principles and Rights at Work, concerning freedom of association, collective bargaining and protection from forced labour, discrimination and child labour.

Specifically regarding child trafficking, international standards are embodied in the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the UN Convention against transnational organized crime.

State responsibility for slavery and bonded labour includes obligations:

1. to designate and implement programmes of action;
2. to adopt enforcement measures, including penal sanctions;
3. to ensure the rehabilitation and reintegration of child victims;
4. to ensure access to free basic education;
5. to cooperate with other States;
6. to establish or designate appropriate national mechanisms to monitor the implementation of national provisions for the prohibition and elimination of the worst forms of child labour;
7. to determine the persons to be held responsible in the event of non-compliance with these provisions;
8. to inform, sensitise and mobilize the general public;
9. to involve and train employers' and workers' organizations and civic organizations;

10. to provide appropriate training for the government officials concerned;
11. to establish special complaints procedures and make provisions to protect from discrimination and reprisals those who legitimately expose violations of the provisions of the ILO Convention 182, as well as establish help lines or points of contact and ombudspersons.

Article 32 of the Convention on the Rights of the Child also requires States Parties to:

1. to provide for a minimum age or minimum ages for admission to employment;
2. to provide for appropriate regulation of the hours and conditions of employment;
3. to provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

## **2. Regional plans of action**

### **a) Africa**

The workshop identified forms of violence that affect children in Africa and considered actions that needed to be taken to address these forms of violence and the actors who would be required to take action.

The following were the priority issues discussed:

#### *Context of armed conflict*

Issues: child soldiers, child abductions/slavery, prostitution, sexual abuse, trafficking, use of children to gather intelligence, refugees/IDPs, separated children, children in conflict with the law and denial of liberty, birth registration (failure to prove identity and age)

Actions:

1. to stop proliferation of small arms and arming of child soldiers; actors: states (buyers & suppliers), African Union, Economic Community of West African States and other sub-regional IGOs;
2. to educate people to resort to peaceful conflict resolution and through dialogue; actors: NGOs;
3. to prohibit recruitment of children by law; actors: states;
4. to encourage states to ratify the Protocol to CRC on children and armed conflict: NGOs;
5. to create an environment for democratic participation and encourage respect for constitutional principles protecting human rights; actors: states;
6. to ensure the reintegration and rehabilitation of former child combatants
7. to train peace keeping forces, especially regional forces in child rights and protection of children; actors: NGOs, sub-regional IGOs, states;
8. to sensitise communities to the evils of involving children in armed conflict and its consequences; actors: NGOs;
9. to address impunity in the security forces; actors: states;
10. to find ways to bring pressure to bear on armed groups to stop recruitment of children and ensure protection of children; actors: NGOs, IGOs, ICRC;
11. to punish the heads of military forces that recruit children; actors: states;
12. to train and to ensure integration of child rights specialists into the security forces; actors: states.

#### *Post-conflict situations*

Actions:

1. to give priority to the protection of children in peace agreements, especially former child soldiers; actors: states;
2. to give priority to the protection of children in reconstruction measures (HIV/AIDS, demobilisation of child soldiers ensuring their reintegration into their communities and their rehabilitation, social and psychological, address impunity and prosecute those who have recruited children as combatants; NGOs should take cases to court or file cases before regional and international human rights bodies, and provide legal assistance to victims);
3. to provide economic support to parents and the family, e.g. health services, employment; actors: states;
4. to provide training to demobilised combatants; actors: states;

5. to ensure that judicial institutions and truth commissions treat former combatants as victims rather than perpetrators; actors: UN, NGOs and governments;
6. to ensure that the reintegration of children into their families takes place with the participation of the child and in a child-sensitive manner; actors: states.

### *Trafficking*

Issues: displacement of children far away from their homes, caused by poverty, occurs within a country (rural to urban) and across borders; violence begins during the process of trafficking and when children reach their host country; harmful child labour and exploitation as well as sexual abuse linked to trafficking; trafficking for the purposes of removing organs.

#### Actions:

1. to cooperate amongst states in the region and create common legislations for protection of trafficked children; actors: states
2. to raise awareness amongst parents about trafficking and the consequences for children, especially in rural areas; actors: NGOs, states through workshops and the use of the media;
3. to initiate research and studies on trafficking and seek cooperation of African and European states; actors: NGOs;
4. to organise sub-regional workshops on national legislation and international instruments protecting children from trafficking and sexual exploitation; actors: NGOs, states;
5. to create a network of NGOs for sharing of information and positive experience in tackling trafficking; actors: NGOs;
6. to advocate for cooperation amongst security agencies; actors: NGOs;
7. to encourage the ratification of the Optional protocol of CRC on sexual exploitation; actors: NGOs.

### *Harmful traditional/customary/religious practices*

Issues: early marriage, FGM, infanticide, sexual abuse recommended by traditional healers/sorcerers, removal of organs, cruel, inhuman and degrading punishment, virginity testing

#### Actions:

1. to develop research and investigation into traditional practices – document different types and practices and their consequences for the child; actors: NGOs;
2. to review national laws and international treaties for the prohibition of these practices, to ratify international treaties; actors: states;
3. to advocate for the implementation of international treaties within domestic law and existing national laws, including with respect to the punishment of perpetrators; actors: NGOs;
4. to remove discriminatory laws; actors: governments;
5. to raise awareness of the prevalence of harmful traditional practices and their consequences for children; actors: NGOs, governments, sub-regional IGOs;
6. to advocate to those directly involved (e.g. traditional leaders, women performing FGM) to prohibit these practices; actors: NGOs;
7. to advocate for the eradication of child marriage; actors: NGOs
8. to develop alternative income generating programmes for women involved in performing FGM; actors: NGOs, states;

9. to encourage people to denounce (including naming and shaming perpetrators) these harmful practices, by mobilising public opinion and to develop an environment where people feel safe to denounce;
10. to share information on existing legislation and programmes to eradicate these practices; actors: NGOs;
11. to strengthen national mechanisms for the protection of children; actors: states.

*Children in conflict with the law and juvenile justice systems*

Action:

1. to encourage community-based rehabilitation; actors: states and NGOs;
2. to avoid institutionalisation of children; actors: states;
3. to review legislation to respect the rights of children who come into conflict with the law and ensure their protection and reintegration into society; actors: states;
4. to prohibit the detention of children with adults, unless in the best interest of the child; actors: States;
5. to develop research on the situation of children in the JJ system and institutions; actors: NGOs;
6. to raise awareness on the situation of children deprived of their liberty and on the treatment of children within the justice system, including through the media; actors: NGOs;
7. to share information, especially on general standards on JJ;
8. to look at more traditional forms of justice, e.g. restorative justice;
9. to share information on best practice; actors: NGOs;
10. to train police, court officials, lawyers, judges on international standards on JJ and children's rights; actors: NGOs, states;
11. to establish institutions and facilities for dealing with children who come into conflict with the law, e.g. through the creation of juvenile courts, especially in the rural areas; actors: states, civil society to lobby governments;
12. to establish facilities for dealing with children who are not criminally responsible through restorative community-based procedures; actors: states;
13. to ensure independence of judiciary; actors: states;
14. to abolish corporal punishment as a form of criminal sanction; actors: NGOs should share information, e.g. RSA Constitutional Court case;
15. to advocate for the age of criminal responsibility to be raised to not lower than 14 and ensure that age of criminal majority is 18, so that any person below 18 is tried in accordance with procedures relating to children, irrespective of the crime committed or if the child is accused together with an adult;
16. to ensure appropriate birth registration – children who are not able to prove their age may be detained while their age is being verified or they may be tried as adults;
17. to advocate for the abolishment of legislation creating status offences that are used to arrest and detain children, e.g. crime of vagrancy or loitering on the streets;
18. to ensure continuation of education of children deprived of their liberty;
19. to provide assistance for the rehabilitation of children who come into conflict with the law; actors: NGOs.
20. to advocate for children not to be deprived of their liberty, except as a measure of last resort and for the shortest period possible;
21. to advocate for states that have ratified the African Charter on the Rights and Welfare of the Child to bring their laws into line with the treaty.

*Other forms of violence noted by the workshop:*

- Poverty and its effect on children
- Infanticide

- Sexual abuse, in particular when recommended by traditional healers
- Child labour and economic exploitation
- Right to education, nutrition
- Deprivation of liberty and judicial systems
- Domestic violence
- Violence in schools
- Children who are seen as political opponents or whose parents are considered political opponents
- Children working and living on the streets
- Children living with/affected by HIV/Aids
- Children with disabilities
- Child pornography including the use of new technology
- Child slavery/abductions/bonded labour
- Extrajudicial execution of children (outside situations of armed conflict)
- Children in institutions (orphanages, safe homes)
- Corporal punishment

*Issues prevailing in all above situations*

1. HIV/Aids is a cross-cutting issue – also good governance and rule of law
2. Advocate for withdrawal of reservations to CRC and other treaties
3. Alleviation of poverty should underlie all responses to violence against children
4. Advocate for ratification of Optional Protocol to the African Charter for the establishment of the African Court on Human and Peoples' Rights and the African Charter on the Rights and Welfare of the Child

*Follow up*

Set up an online network to continue discussion and share information:

Osman Hummida (Sudanese Victims of Torture) volunteered to create an e-group, but someone else will have to coordinate. A suggestion that this be linked to OMCT.

The first initiative could be the drafting of a discussion document identifying issues of violence against children and establishing a plan of action with concrete measures and target dates.

Agreement to set up a focal point in each country and sub-regional focal points:

John Caulker(Sierra Leone)– West Africa (armed conflict & juvenile justice)  
 Fatoumata Sire Diakite (Mali)– West Africa (trafficking & harmful practices)  
 Rebecca Nyonyintono (Uganda)– East Africa  
 Ahmed Salem Ould Bouhoubeyni (Mauritania)– North Africa  
 Charlotte McClain (South Africa)– Southern Africa

UN Study on violence against children: Need for African experts to undertake the study in Africa.



## **b) Latin America and Caribbean**

- We, the participants of the Latin American and Caribbean group at the Tampere conference, would like to emphasize our concern regarding the stigmatisation and suffering that child victims are generally made to endure. More specific forms of children's suffering include the situations of children living or working in the street; armed conflicts; deprivation of liberty; trafficking, as well as other forms of urban and rural violence;
- We are concerned about specific forms of exploitation, such as high risk child labour, child prostitution and pornography, and other forms of contemporary slavery.
- We are deeply concerned by regional proposals to diminish the legal age of criminal responsibility, an age which should remain at 18 years;
- We express our deep concern, because in this growing time of conflict, children are increasingly deprived of their liberty on supposed justified grounds that it is in the interest of their own protection;
- It troubles us that children are continually being denied their status as holders of human rights;
- We would like to underline certain factors that worsen the effects of structural violence against children, and that go so far as to degrade the absolute value of their lives. This includes abandonment from the State in its role to guarantee the human rights of the child; the reduction of resources destined to the satisfaction of economic, social and cultural rights; and the existence of discrimination, corruption, and impunity;
- We underline our concern for the deprivation of identity, to which children of the region are subjected;
- We emphasize the necessity to strengthen and to support economically the bodies of the Inter-American System on Human Rights, in favour of the child.

We commit ourselves to promoting the recommendations from the Tampere declaration, along with the following recommendations to be applied regionally,

To the system of United Nations and the Organisation of American States:

1. to cooperate strictly and systematically between each other;
2. to continue to give special attention to the distinct forms of violence faced by children in the general reports on the situation of human rights in the countries within the region, and to dedicate improved efforts in following the recommendations made in those reports;
3. to bring together a special hearing to consider children's violence in the region within the framework of the competence of the Inter-American Commission on Human Rights.

To the States:

1. to assume the role of guaranteeing the respect of human rights of the child, especially the right to personal security and the right to a decent life without violence;
2. to design and apply measures of positive action to eradicate structural violence against children and to repair negative effects through social programs that guarantee the enjoyment of economic social and cultural rights for children, families and communities;
3. to increase the amount of financial contribution awarded to the Special Rapporteur on the rights of the child of the Inter-American Commission on Human Rights;
4. to revise and reform national as well as local legislation with the purpose of preventing, sanctioning and eradicating violence against children;

5. to adopt all necessary measures in order to bring into practice international, national and local standards of childhood protection, along with decisions made by regional human rights bodies;
6. to ratify the Rome Statute, in which the International Criminal Court would be created;
7. to consecrate in national legislation that the minimum age of criminal responsibility be 18 years and avoid the imprisoning of those persons under that age, as well as the application of educational, protective or curative measures that result in a deprivation of liberty.

To NGOs and other actors within civil society:

1. to supervise and provide follow-up to the recommendations from the Tampere declaration and from this plan of action;
2. to impel that individual cases be presented before the systems of protection and promotion of the rights of the child, equally as much as in the United Nations as in the Organisation of American States;
3. to impel the creation and strengthening, in applicable cases, of systems of promotion and protection of the rights of the child in national environments.

### **c) Asian Region**

We, the participants from the Asian region, support the Tampere Declaration adopted at the International Conference on Children, Torture and Other Forms of Violence : Facing the Facts, Forging the Future.

This international conference was attended by participants from 9 countries of this region, namely Bangladesh, Cambodia, China, Hong Kong, India, Nepal, Pakistan, Philippines, Sri Lanka.

Any plan of action in Asia should bear in mind the diversity in socio-economic conditions, culture and religion; we strongly suggest a multi-dimensional approach in tackling torture and violence against children. Asia is the scene of very severe forms of violence against children, such as child slavery, child trafficking, children in armed conflict and child marriage. These forms of torture and violence are accepted on the grounds of religion and traditional and cultural practices. This situation is fast deteriorating due to the impact of globalisation which is further marginalizing already vulnerable children.

Torture can be inflicted by the state, the family, institutions, etc., it has different impacts, both immediate and secondary, which need to be addressed. For example, in families there are 2 kinds of torture :

- children being tortured by their own relatives, etc.
- domestic servants being tortured

We recommend to the United Nations:

1. that the international study on violence against children recommended by the UN General Assembly contain an independent decentralised research component, bearing in mind the Asian situation;

We recommend that States take the following measures:

Legislative measures

2. to ratify and to enforce international human rights instruments, in particular the CRC, the Convention Against Torture, and the Rome Statute of the International Criminal Court;
3. to adopt and enforce child-related domestic laws and to protect children from acts of torture and violence;

#### Juvenile Justice

4. to reform the prosecution system in conformity with international juvenile justice standards;

#### Economic, social and cultural rights:

5. to take into account children's economic, social and cultural rights, when addressing violence against children;

#### Discrimination

6. to pay more attention to gender issues, when addressing violence against children, in particular violence affecting young gay boys and boys in general as a means of disciplining;
7. to pay more attention to minority issues, especially caste segregation, when addressing violence against children;

#### Implementation

8. to establish sub-regional mechanism to monitor the implementation of human rights instruments in the region in order to check violence against children;
9. to provide staff responsible for children in detention centres, in juveniles courts, in the family, at the workplace, in schools, and other institutions, with guidelines to implement the Convention on the Rights of the Child;
10. to establish fact finding missions on the beating of domestic servants;
11. to punish the perpetrator of violence against children and thus to send a clear message to society that offenders will face criminal action;
12. to establish a reporting system to ascertain the extent to which perpetrators are being punished;

#### Rehabilitation

13. to ensure psycho-social support to child victims of violence and their carers;

#### Awareness raising

14. to conduct a concerted campaign at the Asian level, in collaboration with non state actors, such as the media and religious authorities, to bring into focus in this region the issue of violence against children;
15. to implement awareness-raising programmes at the community level to address religious, cultural and traditional misconceptions which perpetuate violence against children, including situations which have an impact on the girl child;

#### Research

16. to carry out a research in different sub-regions of Asia, to identify Asia-specific situations of violence against children and the manner in which they are dealt with;
17. to conduct a multi-sectoral South Asian workshop on violence against children;

#### We recommend OMCT :

18. to facilitate training programmes to build the capacity of governments to holistically handle violence against children;
19. to facilitate inter-country and inter-regional visits for the sharing of expertise and experience;

We commit ourselves and recommend other NGOs:

20. to start a mass level campaign on torture;
21. to provide alternative reports on the rights of the child and submit them to the relevant UN bodies ;
22. to facilitate a South Asian Workshop on Violence Against Children involving NGOs, professionals, etc. and set up a forum called “Children First” where cases related to children can be raised;
23. to form, with the help of OMCT, a network on violence against children.

**d) “Western Countries” group, later joined by the CEE group**

*Recommendations for the plan of action*

1. NGO's should develop media strategy, to counter negative, and promote favourable, press coverage and related policies; this should be done in consultation with members of the media and their organizations.
2. In countering negative media practices, NGOs should make use of the recently adopted by IFJ code of practice that formally binds all journalists worldwide.
3. Extensive use of the Internet should be made both to promote children rights but also spread information about their violations and store related information that would then become easily accessible.
4. OMCT is asked to put the Tampere declarations on its site, not only in the three official languages, but also in all languages in which translations will become available – directly or through hyperlinks. NGOs are urged to translate the declarations in their countries' languages and notify the OMCT. It is of utmost importance to “translate” the declaration into simple language so as to make it accessible to children.
5. NGOs are encouraged to use regional mechanisms to help defend the rights enshrined in the declaration. For the European region ECHR, ESC, CPT, ECRE and the CoE's specialists groups were named. OMCT is asked to produce a comprehensive manual on the use of all mechanisms, as those produced by MRGI on minority rights and on CERD. NGOs should also explore why UN mechanisms (Treaty Monitoring Bodies and Special Rapporteurs) are not put to sufficient use and assure that they, including the experts to be appointed to carry out the UN GA mandated study.
6. The CoE is requested to produce a compilation on ECHR case law pertaining to violence against children, and children's rights in general, similar to its publication on freedom of expression case law etc.
7. IGOs and NGOs are urged to use all appropriate means to ensure the effective protection of human rights defenders who make public allegations about violence against children.
8. The OSCE is urged to include a session on children's rights with particular emphasis on violence against children in its annual review dimension meeting on this subject.
9. The EU is urged to include among its fundamental rights concerns the defence of children's rights and in particular the monitoring of violence against children.
10. NGOs should explore ways in which to include mass violence against children, including paedophilia, among ICC's crimes against humanity.
11. All states are urged to ratify all pertinent international instruments (ICC, ECERC [CoE], FCNM, CAT, the Optional Protocol against the use of child soldiers, etc.) even if they consider that domestic legislation already covers their provisions, so as to set the good example for all countries likewise.
12. Unaccompanied trafficked children should be granted interim protection or legal residence by host states before their eventual, well prepared, repatriation: all

European countries are urged to adopt a common standard on this matter to help fight trafficking more efficiently.

13. NGOs should jointly ask the CRC to issue a specific recommendation on violence against children.
14. Funders should be asked to “mainstream” children rights and increase grants to related programs, especially those dealing with exposing and fighting violence against children.
15. European NGOs are urged to assist in the empowerment and capacity building of related NGOs from other regions, and funders should make grants available for such projects.
16. OMCT is urged to help develop common principles and guidelines to fight child trafficking in each region and also help to bring together NGOs at the bilateral level (between countries “exporting” and “receiving” trafficked children).

### **e) East and Central Europe**

#### *Most vulnerable groups:*

- Displaced children – Internally displaced and refugees from neighbouring countries;
- Roma children;
- Disabled children;
- Street children.

#### *Most vulnerable situations:*

- Armed conflicts;
- Violence by law enforcement officials / police;
- Violence due to the poor implementation of laws;
- Poverty / resulting in lack of health care;
- Trafficking;
- Using children in political struggles while attacking political prisoners;

#### *Plans for the activities:*

1. Strengthening national HR institutions;
2. Special attention of the state to child institutions (which due to dire financial situations are the most vulnerable);
3. Use of the media for disseminating the Tampere declaration;
4. Adoption of special strategies for monitoring and effective use of foreign aid within our own states;
5. Creation of special programs and action plans to fight trafficking at the state level;
6. Creation of a data-base of all NGOs working at the national level for exchanging information and helping victims of trafficking;
7. Diverse public awareness and educational activities against domestic violence, violence in schools, negative cultural practices, against trafficking, use of child labour, etc. The target groups can be teachers, parents, police officials, juvenile prison officials, etc.;
8. Creation of separate juvenile justice systems and designation of specially trained personnel for these institutions;
9. Creation of legislation outlawing corporal punishment and domestic violence;
10. Development of school curricula drawing on international experience and help of the INGOs. Introduction of special programs and curricula in social skills, non-violent solution of conflicts, etc.;

11. Making places of detention as transparent and accessible as possible for NGOs and other civil society actors, by special laws on the procedure for access and permission;
12. Lobbying with international organizations to put pressure on governments for non compliance with international commitments and concluding observations and recommendations of treaty bodies, especially of the CRC and CAT;
13. Establishment of a network of NGOs to help them in the preparation of alternative reports for the relevant UN mechanisms;
14. Cooperation with all groups whether state or non-state, including religious groups, for making child institutions more comfortable for children and for providing special care for children leaving those institutions (because of their age);
15. Creation of an alternative counselling system for child victims of domestic / school violence, as well as for street children.

## **f) Middle East**

### *General issues*

- Lack of legislation on the local and regional levels, safeguarding children's rights that take into consideration international standards, as well as a lack of effective mechanisms to enforce respect for children's rights.
- Poverty and negative effects of globalisation, which result in the phenomena of child labour and street children.
- Widespread lack of respect for children's rights within the society, including patriarchal practices and beliefs that foster violence against children.
- Lack of democratic practices and respect for human rights and the rule of law, which often results in gross violations of children's rights, including torture and cruel, inhuman and degrading treatment.
- The absence or lack of juvenile justice systems adhering to international standards, in keeping with the best interests of the child.
- Sexual exploitation and abuse, by both the family and society.
- Foreign occupation.
- International sanctions against Iraq, which have had a devastating impact on Iraqi children.
- Negative effects on the Middle East resulting from September 11.

### *Specific issues*

- Landmines
- Refugees and internally displaced persons
- Child trafficking
- Armed conflict
- Child soldiers

### *Plan of action*

1. to organize awareness campaigns to create a culture that protects children from torture, violence and discrimination.
2. to develop programmes that include effective children's participation in all fields related to combating violence and torture.
3. to establish and develop a united Arab network to work on issues of protection of children who are vulnerable to violence and torture as well as to implement and follow up the Tampere Declaration on different levels (awareness, coordination, training, media, lobbying and advocacy –locally, regionally and internationally).

4. to activate popular participation and civil society in decision-making processes, to protect the Arab child from all forms of violence and to develop the suitable mechanisms that guarantee respect for children's rights.
5. to lobby and advocate towards ending the sanctions against Iraq, in view of the fact that it is one of the worst forms of violence against the children of Iraq.
6. to lobby and advocate for the immediate end of the Israeli occupation of Arab lands, which is a fundamental cause of violence, torture and violations of Palestinian children's rights.
7. to work to empower the economic rights and sustainable development which will assist in reducing the problem of poverty in the Middle East and encourage Arab cooperation in this regard, including economic support.
8. to request that the Arab League adopt the Tampere Declaration and work towards implementing its recommendations at all levels.

# Interpretation of the notion of torture within the framework of the rights of the child

## Introductory considerations

Following its Day of General Discussion on State Violence Against Children, the Committee on the Rights of the Child recommended that “effective measures be sought in order to strengthen existing UN human rights mechanisms to ensure that violence against children and the situation of children living and/or working in the street are adequately addressed”.<sup>4</sup> For this purpose, the Committee encouraged the Office of the High Commissioner for Human Rights to organize a special workshop to examine, *inter alia*, “the need to review the application of the existing definition of torture in order to take into account more adequately the special characteristics of children”.<sup>5</sup>

Furthermore, following paragraph 5 of the UN Human Rights Commission resolution 1994/37 B, the Special Rapporteur on Torture examined questions concerning torture primarily directed against children, as well as conditions conducive to such torture, and recognized that “there remains (...) a clear and compelling necessity to make a separate comment on the issue”.<sup>6</sup> According to the Special Rapporteur, “this necessity derives from the consideration that children are necessarily more vulnerable to the effects of torture and, because they are in the critical stages of physical and psychological development, may suffer graver consequences than similarly ill-treated adults”.<sup>7</sup>

Since there is no uniformity in the interpretation of the criteria of torture, there is no obligation on the Committee on the Rights of the Child to interpret the provisions of article 37 in a way which parallels the approaches of the adult-centered bodies.

## A. Definition of torture<sup>8</sup> within the framework of the rights of the child

### The International Bill of Human Rights

Everyone’s right – including that of children –to be protected from torture and other cruel, inhuman or degrading treatment or punishment is asserted in the Universal Declaration of Human Rights (article 5) and the International Covenant on Civil and Political Rights (article 7).

The absolute nature of states’ obligations to provide protection has been emphasised in successive General Comments from the Human Rights Committee on interpretation of article 7 of the International Covenant.<sup>9</sup>

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<sup>4</sup> Committee on the Rights of the Child, Day of General Discussion on State Violence Against Children, Recommendation 5, 22 September 2000.

<sup>5</sup> *Ibid.*

<sup>6</sup> Report of the Special Rapporteur of the Commission on Human Rights on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/1996/35, 9 January 1996, par. 10.

<sup>7</sup> *Ibid.*

<sup>8</sup> When not otherwise stated in this text, “torture” covers torture and other cruel, inhuman or degrading treatment or punishment

<sup>9</sup> Human Rights Committee, General Comment 7, 1982, HRI/GEN/1/Rev.4, p. 86; updated in 1992 by General Comment 20, HRI/GEN/1/Rev.4, p. 108



The Committee states:

“The aim of the provisions of article 7 (...) is to protect both the dignity and the physical and mental integrity of the individual. It is the duty of the State Party to afford everyone protection through legislative and other measures as may be necessary, against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity... The text of article 7 allows no limitation. The Committee also reaffirms that, even in situations of public emergency (...) no derogation from the provision of article 7 is allowed and its provisions must remain in force. The Committee likewise observes that no justification or extenuating circumstances may be invoked to excuse a violation of article 7 for any reasons, including those based on an order from a superior officer or public authority”.

### **Declaration and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.**

In 1975, the General Assembly adopted the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>10</sup> The provisions of the Declaration formed the basis for the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>11</sup>

The Convention refers in its Preamble to the relevant articles in the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights and indicates that its purpose is “to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world”.

It defines torture, for its purposes, as

“any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions” (article 1).

Thus this Convention, unlike the Universal Declaration, International Covenant and the Convention on the Rights of the Child (see below), limits for its particular purposes the definition of torture by specifying that the act(s) must involve

- “severe pain or suffering, whether physical or mental”,
- intentionally inflicted for various broadly defined purposes, and
- be “perpetrated by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”.

Moreover, the definition of torture excludes “pain or suffering arising only from, inherent in or incidental to lawful sanctions”.

The specific purposes of the Convention include the obligation to ensure that all acts of torture are offences under criminal law (article 4) and are punished as such (article 5 to 8)

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<sup>10</sup> General Assembly Resolution 3452 (XXX), 9 December 1975, Annex.

<sup>11</sup> General Assembly Resolution 39/46, 10 December 1984.

This Convention applies equally to child victims and, in addition to prevention of torture, article 16 requires States Parties to the Convention to undertake to prevent in any territory under its jurisdiction “other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”.

The Convention is not only aimed at punishing the perpetrators of acts of torture, but also at protecting the victims. Within the scope of its limited definition, the value of the Convention is in the detailed obligations it places on States to prevent and to respond to torture and other ill treatment effectively. For example, provisions in articles 10, 11, 12, and 13 which apply to torture and to other acts of cruel, inhuman or degrading treatment or punishment, require:

- Education and information about prohibition against torture to be fully included in training of all those involved with people subject to arrest detention or imprisonment;
- Systematic review of rules covering interrogation and custody, etc;
- Prompt and impartial investigation of incidents;
- Individuals’ right to complain and to have their case promptly and impartially examined by competent authorities, with safeguards to protect the complainant and witnesses against ill-treatment or intimidation.

The Convention emphasises in relation to its definition of torture in article 1 and its extension to cover other forms of ill-treatment in article 16 that it is “without prejudice to any international instrument or national legislation which does or may contain provisions of wider application” (article 1(2); see also article 16(2)). In particular, these limited definitions must not be used to restrict the application of art. 37 (a) of the Convention on the Rights of the Child, which states that “no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment”.

### **The four 1949 Geneva Conventions**

The four 1949 Geneva Conventions are mainly aimed at protecting persons not taking, or no longer taking part in armed conflicts, viz. wounded, sick or shipwrecked combatants, detained persons and civilians. Article 3 common to the four Geneva Convention, which enshrines basic rules of humanitarian law, prohibits “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture”, when imposed on persons taking no active part in the hostilities.

Moreover, article 50, 51, 130 y 147 common to the four 1949 Geneva Convention considers, among others, “torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health”, as grave breaches of humanitarian law, when committed against persons protected by the conventions.

### **Statute of the International Criminal Court**

The Statute of the International Criminal Court, adopted in 1998, includes “torture” in its definition of both war crimes and crimes against humanity. Its definition of torture is related to that in the Convention against Torture:

“the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in, or incidental to, lawful sanctions”.<sup>12</sup>

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<sup>12</sup> Statute of the International. Criminal Court, A/CONF.183/9, 17 July 1998, art. 7 par. 2 (e).

## Convention on the Rights of the Child (CRC)

The Convention on the Rights of the Child echoes the provisions in the Universal Declaration and International Covenant in article 37, emphasising their application to children (defined in the CRC as everyone below 18 unless under the law applicable to the child, majority is attained earlier):

“States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment...”.

The Committee on the Rights of the Child has not as yet drafted a General Comment on article 37. But in various statements and in its concluding observations on States Parties' reports, it has emphasised, in line with the Human Rights Committee's interpretation of the similar provision in the International Covenant, that the obligations implied by article 37 are absolute and require protection of all children, wherever they are and whoever the perpetrator may be.

As the *Manual on Human Rights Reporting*, 1997, states: “By presenting it as a general and absolute right, the Convention [on the Rights of the Child] shows that any of the forms of treatment or punishment covered by this article should be prevented and combated at all moments and in all circumstances, including within family life or in the school system”.<sup>13</sup>

Furthermore, the Committee, in its examination of States Parties' reports and in other comments, has indicated that it regards the United Nations rules and guidelines relating to juvenile justice as providing relevant detailed standards for implementation of article 37.<sup>14</sup> These rules and guidelines are: the Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules),<sup>15</sup> the Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)<sup>16</sup> and the Rules for the Protection of Juveniles Deprived of their Liberty.<sup>17</sup>

The Committee has expressed concern at allegations of torture and inhuman or degrading treatment of children by a wide range of state officials and private individuals including police and security forces, staff in detention centres and other institutions, teachers and also within the family.<sup>18</sup>

The CRC is the first international Convention to explicitly require protection from “all forms of physical or mental violence”, in its article 19:

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

Other provisions in the Convention require action to protect children from particular forms of violence. For example:

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<sup>13</sup> *Manual*, p.440

<sup>14</sup> See for example Report on the tenth session, October-November 1995, CRC/C/46, para. 214 or report on the ninth session, May-June 1995, CRC/C/43, annex VIII, p. 64

<sup>15</sup> General Assembly resolution 40/33

<sup>16</sup> General Assembly resolution 45/112

<sup>17</sup> General Assembly resolution 45/113

<sup>18</sup> See for example Concluding observations of the Committee on the Rights of the Child : Democratic Republic of the Congo. 08/06/2001. CRC/C/15/Add.153, par. 32.

- harmful traditional practices (article 24(3))
- economic exploitation and hazardous work (article 32)
- sexual exploitation and abuse (article 34)
- abduction, sale or traffic (article 35)
- any other harmful exploitation (article 36)

In light of all the provisions of the Convention, including the articles identified as general principles, the Committee has emphasised that legislation should prohibit all forms of violence against children. Thus, for example in recommendations adopted following its first day of General Discussion on State Violence Against Children (2000) it stated: “The Committee recommends that States Parties review all relevant legislation to ensure that all forms of violence against children, however light, are prohibited, including the use of torture, or cruel, inhuman or degrading treatment (such as flogging, corporal punishment or other violent measures) for punishment or disciplining within the child justice system, or in any other context (...)”.<sup>19</sup>

## **B. An interpretation of torture within the framework of the rights of the child**

As children are more vulnerable to the effects of violence than adults and have limited capacity to express, to defend and to understand, the general international definition of torture must be interpreted in a way which will effectively protect their rights. A child-oriented perspective requires a new interpretation of the three components of the definition of torture.

### 1. The three components of torture within the framework of the rights of the child

#### a) severe pain and suffering

In the case of a child, the threshold of pain and suffering amounting to torture will vary with the age, sex, health, maturity and personal circumstances of the victim. Without denying the need for a threshold, this threshold is likely to be lower than that of an adult. Furthermore, children cannot be treated as a single homogenous group, since the international legal definition of the child encompasses babies, infants, children and youths up to the age of 18 (art. 1 of the Convention).<sup>20</sup>

According to the UN Human Rights Committee, this threshold will also depend on the nature, purpose and severity of the treatment applied.<sup>21</sup> Similarly, in *Aydin v. Turkey*, the European Court of Human Rights deemed that the level of pain and suffering imposed on a 17 year-old girl by Turkish security forces had to be evaluated “having regard to her sex and youth and the circumstances under which she was held”.<sup>22</sup> In this respect, the Inter-American Court of Human Rights also considers that “in order to establish if torture has been inflicted and its scope, all the circumstances of the case should be taken into consideration, such as the nature and context of the respective aggressions, how they were inflicted, during what period of time, the physical and mental effects and, in some case, the sex, age and state of health of the victims”.<sup>23</sup>

Therefore, in order to evaluate the pain inflicted on children, both objective and subjective criteria must be taken into account. Moreover, not only immediate physical and psychological

<sup>19</sup> Committee on the Rights of the Child, Day of General Discussion on State Violence Against Children, 22 September 2000, Part. II par. 8.

<sup>20</sup> See Nathalie MAN, *Children, Torture and Power*, London, Save the Children, 2000, p. 13.

<sup>21</sup> Human Rights Committee, General Comment 20 on art. 7 of the ICCPR, 10/04/92, par. 4.

<sup>22</sup> European Court of Human Rights, *Aydin v. Turkey* (57/1996/676/866), Judgment, September 25 1997, par. 84.

<sup>23</sup> Inter-American Court of Human Rights, *Villagran Morales et al.*, Judgment, Serie C no 63, November 19 1999, par. 74.

damages, but also secondary consequences have to be examined. Indeed, violence against children may have a negative impact on their capacity to develop in a holistic manner.

It would be impossible, and certainly counter-productive, to draw up a comprehensive and exhaustive list of all cases of violence amounting to torture within an interpretation of torture against children. The level of pain would then be determined according to the circumstances of each case. In other words, without being excessively restrictive, the interpretation should be aimed at presenting a child-oriented meaning of the expression “severe pain or suffering, whether physical or mental”, which is at the heart of the international notion of torture.

b) official capacity

Within the framework of the rights of the child, the scope of State legal responsibility for torture or cruel, inhuman or degrading treatment or punishment should be subject to wide interpretation. Due to the fact that most cases of violence against children are committed within private spheres, such as the family, the workplace, schools and other institutions, State responsibility cannot be strictly confined to acts directly perpetrated by State officials. The obligation of due diligence also requires the State to adopt preventive, protective and reparative measures against abuses perpetrated by private actors. If the State does not fulfil this obligation, it must be held responsible, because it may be considered that the abuses were committed “with the consent or acquiescence of a public official”, as stated in article 1 of the Convention against Torture.

In other words, within the framework of the rights of the child, States must be held responsible not only for torture or cruel, inhuman or degrading treatment or punishment directly imputable to their officials, but also for failing to address violence perpetrated by private actors.

Under article 2(1) of the Convention, States Parties must not only respect, but also ensure the rights set forth in the Convention. Article 3(2) details this obligation by stating that “States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures”. This means that the State must be held responsible not only for intentional acts, but also for negligence,<sup>24</sup> including, as stated in this article and article 19, the failure to take all appropriate measures to protect the child. As we will see below, this may include responsibility for acts, of which the direct perpetrators are private actors.

Obligation of due diligence means that States Parties must examine the adequacy and implementation of legal safeguards to address and counter torture or other cruel, inhuman or degrading treatment or punishment. Due diligence imposes various positive measures that States Parties must adopt in conformity to the Convention on the Rights of Child. Such measures include the obligations to prevent, to stop, to investigate and to punish acts of violence, as well as to provide adequate compensation and to promote recovery and reintegration of the victim.<sup>25</sup>

This point of view was clearly adopted by the Inter-American Court of Human Rights when it stated:

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<sup>24</sup> Eric SOTTAS, “A Non-Governmental Organization Perspective of the United Nations’ Approach to Children and Torture”, *Childhood Abused: Protecting Children Against Torture, Cruel, Inhuman and Degrading Treatment and Punishment*, G. Van Bueren (ed.), Dartmouth Publishing Company Ltd, 1998, p. 145.

<sup>25</sup> See art. 19 par. 2 and 39 of the Convention on the Rights of the Child.

“An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention”.<sup>26</sup>

In its concluding observations on Guatemala, under the paragraph devoted to torture and other forms of ill-treatment, the Committee on the Rights of the Child expressed its deep concern “that many children fear for their lives because they are continually threatened and are victims of violence, notably when they are living and/or working in the street but also when they are at home”.<sup>27</sup> The Committee was particularly concerned, not only because of the alleged involvement of the State police, but also because of “the lack of proper investigation of these cases by Guatemalan authorities”.<sup>28</sup>

Regarding violence within the family, States Parties must be held responsible if they do not establish a mechanism whereby the private domain is subject to public scrutiny. For this purpose, family must be widely defined so as to include all individuals usually living in the same place and related through intimacy, blood or law. Criteria, both subjective, such as the feeling of being part of a common private sphere, and objective, may be used to define family. As a result, such a definition includes individuals who might not be recognized as members of the family by the domestic legal system, such as the concubine of one of the parents, a house worker or a neighbour.<sup>29</sup>

Such a monitoring mechanism must be balanced with the right to respect for private and family life, home and correspondence.

The UN Committee on the Rights of the Child has already pointed out that the official capacity of the perpetrator of acts of torture is not a requirement under the Convention. In its concluding observations regarding the situation in the Democratic Republic of Congo, for example, the Committee expressed its deep concern “that children are regularly the victims of cruel, inhuman or degrading treatment and sometimes constituting torture committed by, *inter alia*, (...) teachers and in the family, and that these acts are violations of children’s rights”.<sup>30</sup>

Similarly, the UN Human Rights Committee has already stressed that States have a duty to protect everyone against torture or cruel, inhuman or degrading treatment or punishment “whether inflicted by people acting in their official capacity, outside their official capacity or *in a private capacity*” (emphasis added).<sup>31</sup> The Committee has also specified that this protection applied to “children, pupils and patient in teaching and medical institutions”.<sup>32</sup>

In this regard, the European Court of Human Rights has also considered that the prohibition of torture or inhuman or degrading treatment or punishment included “such ill-treatment

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<sup>26</sup> Inter-American Court of Human Rights, Velasquez-Rodriguez, Ser. C no 4, Judgment, July 29 1988, par. 172

<sup>27</sup> Committee on the Rights of the Child, Concluding observations: Guatemala, CRC/C/15/Add.154, 8 June 2001, par. 30.

<sup>28</sup> Ibid.

<sup>29</sup> The Committee on the Rights of the Child defines the family as follow: “The references to “family” (or to “parents”) must be understood within the local context and may mean not only the “nuclear” family, but also the extended family or even broader communal definitions including grandparents, siblings, other relatives, guardians or care providers, neighbours, etc”. Committee on the Rights of the Child, 28<sup>th</sup> session (CRC/C/111), Discussion on “Violence Against Children, Within the Family and in Schools”, Friday 28 September 2001, Part II par. 1.

<sup>30</sup> Committee on the Rights of the Child, Concluding observations: Democratic Republic of Congo, CRC/C/15/Add.153, 8 June 2001, par. 32.

<sup>31</sup> Human Rights Committee, General Comment 20 on art. 7 of the ICCPR, 10/04/92, par. 2.

<sup>32</sup> Human Rights Committee, General Comment 20 on art. 7 of the ICCPR, 10/04/92, par. 5.

*administered by private individuals*" (emphasis added).<sup>33</sup> Invoking in particular art. 19 and 37 of the Convention on the Rights of the Child, it has added that "children and other vulnerable individuals, in particular, are entitled to State protection, in the form of effective deterrence, against such serious breaches of personal integrity".<sup>34</sup>

In the case *A v. UK* (1998), the Court held that the repeated beating of a young English boy by his stepfather amounted to a breach of article 3 of the European Convention on Human Rights and that the UK Government was responsible because the domestic law allowing "reasonable chastisement" failed to provide sufficient protection including "effective deterrence". When the stepfather was prosecuted in an English court, the burden of proof was on the prosecution to establish that the assault went beyond the limits of lawful punishment ("reasonable chastisement"), and not on the defendant to prove it did not. The stepfather was acquitted.<sup>35</sup> In other words, the State, responsible for the framework of domestic law, was found to be responsible for the breach of the child's human rights, although the punishment was administered by a private individual in the child's home. In the case in question, the decision of the Court was about inhuman or degrading punishment. However, it may be argued that the same statement may be applied to cases of torture.

### c) purpose

As far as children are concerned, purpose as a component of torture can be too restrictive. Through the broad ratification of the Convention on the Rights of the Child, the international community has recognized that children need special protection under international law. Because of their particular vulnerability, children require higher standards of protection than adults and specific positive measures. In particular, the State must assume a higher degree of responsibility in cases of torture or cruel, inhuman or degrading treatment or punishment perpetrated against children.

In addition to State responsibility for negligence in case of violence perpetrated by private actors, it must be recognized that States have an absolute responsibility for acts of torture and other forms of cruel, inhuman or degrading treatment or punishment perpetrated by their agents against children. This means that they must be held responsible, even though these acts may be perpetrated without any specific purpose. The severity of the suffering imposed and the official capacity of the perpetrator should be the main requirements.

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<sup>33</sup> European Court of Human Rights, *A. v. UK* (100/1997/884/1096), Judgment, September 23 1998, par. 22. In a recent case, the Court also stated that "the obligation on High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment, including such ill-treatment administered by private individuals". *Z v. UK*, Judgment, May 10 2001, par. 73.

<sup>34</sup> European Court of Human Rights, *A. v. UK* (100/1997/884/1096), Judgment, September 23 1998, par. 22. In *Z v. UK*, the Court specified that States' measures "should provide effective protection, in particular, of children and other vulnerable persons and include reasonable steps to prevent ill-treatment of which the authorities had or ought to have had knowledge". Judgment, May 10 2001, par. 73.

<sup>35</sup> European Court of Human Rights, *A. v. UK* (100/1997/884/1096), Judgment, September 23 1998, par. 23 and 24.

## **Situations amounting to torture or other cruel, inhuman or degrading treatment or punishment against children**

Taking into account these general characteristics which set up the framework of an interpretation of torture adapted to the particular vulnerability of children, it is desirable to give a more concrete meaning to this interpretation by examining various situations which, depending on the special sensitivity of children, might amount at least to cruel, inhuman or degrading treatment or punishment, or possibly to torture. For this purpose, the following situations should be contemplated from a children's rights perspective.

- a) Juvenile justice system**
- b) Death penalty and life imprisonment**
- c) Violence in detention**
- d) Violence in child institutions**
- e) Violence in the school**
- f) Violence in the family**
- g) Sexual violence and related child trafficking**
- h) Child slavery, bonded labour, and related child trafficking**

### **a) Juvenile justice system**

The international rules and guidelines dealing with juvenile justice are not only aimed at ensuring fair trials to children in conflict with the law, but also constitute important safeguards against torture or other forms of cruel, inhuman or degrading treatment or punishment.

Most of these rules are embodied in articles 37 and 40 of the Convention on the Rights of the Child. The UN Rules for the Protection of Juveniles Deprived of their Liberty and the UN Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") also provide detailed recommendations which complement these two articles.

The purpose of this chapter is to highlight certain facts, which, far from being exceptional, can help to further emphasise the particular exposure of children in conflict with the law to torture and other forms of cruel, inhuman and degrading treatment or punishment.

#### *Age of criminal responsibility and juvenile courts*

According to article 40 (3) of the Convention on the Rights of the Child, "States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular: (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law (...)."<sup>36</sup> The special standards applicable to children also imply that detained children must be "separated from adults unless it is considered in the child's best interest not to do so".<sup>37</sup>

At the international level, a minimum age of criminal responsibility should be established, below which there will be no criminal responsibility. Above this age, sanctions could be

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<sup>36</sup> Article 4 (1) of the Beijing Rules also recommends:

'In those legal systems recognising the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the fact of emotional, mental and physical maturity.'

<sup>37</sup> Art. 37 (c) of the Convention on the Rights of the Child.



foreseen, but clear restrictions could be outlined with respect to sanctions which must never be applied to children.

Article 37(a) of the Convention on the Rights of the Child already contains such measures forbidding capital punishment and life imprisonment without possibility of release. This is, however, unsatisfactory. In one sense, because it does not forbid life imprisonment as such, but only in the case where there is no possibility of release (see below for further details). In another sense, because the age of the child is not taken into account. If, for instance, we accept penal responsibility above twelve years, it will appear reasonable to introduce a distinction between sanctions applied to a twelve year old and a seventeen year old. Further work needs to be done to clarify what type of sanctions can and cannot be imposed on a child and, more particularly, those which should not be applied to children, and which should be considered as torture.

Moreover, too low an age of criminal responsibility could imply that children could be investigated and interrogated by police officers not familiar with dealing with children, and their judicial proceedings could be handled without taking into account the special standards applicable to judicial proceedings involving children. It could also imply that children can be incarcerated with adults. Those factors could put children in adult settings, which obviously imply much higher risks of torture and cruel, inhuman and degrading treatment.

Although the Convention gives States discretion in establishing at what age a child can be held criminal responsible for his/her acts, too low an age should be considered as incompatible with the Convention, because it would restrict or eliminate rights established in that Convention.

#### *Exclusion of Torture for Pain Arising only from Lawful Sanction*

Article 1 of the Convention Against Torture states that torture does 'not include pain or suffering arising only from, inherent or incidental to lawful sanctions'. It will be noted that Article 1 of the Declaration on the Protection of all Persons From Being Subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adds a corrective, stipulating 'lawful sanction, to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners.' This was not included in the definition of the Convention Against Torture. Nevertheless, the current interpretation stresses that lawful sanction should not be considered solely at the national level but should also take into consideration international standards. If a national law authorises a sanction that is prohibited by an international instrument the sanction cannot be considered lawful. Such instruments include not only the Convention on the Rights of the Child, but also the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the UN Rules for the Protection of Juveniles Deprived of their Liberty, and the UN Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines).

While it is obvious that one may not consider as torture, the suffering resulting from legitimate sanctions, the latter should, however, be proportionate both to the crime committed and to the personal situation of the person, in particular to her/his age.

#### *Pre trial detention*

A recent study confirmed that in most countries, children under arrest or awaiting trial in detention centres dramatically outnumber children sentenced to deprivation of liberty<sup>38</sup>. One of the reasons for this is the illegal use or misuse of these interventions. Arrest and pre-trial detention are used for example as a threat, a disciplinary measure or even to replace

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<sup>38</sup> G. CAPPELAERE, 'Enfants privés de liberté. Droits et réalités.', Liège, Jeunesse et Droit, 2000.

sentences. It is indeed not exceptional that the children concerned never face trial or if they do, are released upon trial. It is significant to note that personnel working in detention centres for children have often been known to observe that most of the children do not belong there.

The link with cruel, inhuman or degrading treatment or punishment and even torture should be clear. The excessive duration of such practices, especially because their victims, the children, are at a critical stage of their development, may amount to cruel, inhuman or degrading treatment. Moreover, the frequent recourse to violence (for example during interrogations), but also the deprivation of basic social services such as health or education is common (see below for further details).

### *Traditional justice*

In many countries, traditional justice mechanisms do exist outside the formal judicial proceedings and may be used particularly for dealing with children in conflict with the law. Such practices are in line with article 40 (3) of the CRC<sup>39</sup> and should therefore be encouraged as long as the conditions spelled out in this article are also met. Unfortunately, traditional justice is not always respectful of human rights and can therefore be detrimental to children. Torture as well as cruel, degrading or inhuman treatment or punishment may be part of the human rights violations. Children can be maimed for example or inflicted with various forms of corporal punishment; abused and traded; convicted to forced labour, or they may have to suffer long periods of hiding because of the omnipresent threat of harsh, but traditionally permissible, retaliation by the victims or their families (blood feuds). Children may even be targets of such retaliation, for crimes committed by their family members. It is important to note in the context of torture that the authorities very often condone these practices.

### *Long term consequences*

Within the framework of torture and other cruel, inhuman, degrading treatment or punishment, it is also important to stress the long-term consequences of even minor and, at first sight, not at all harmful juvenile justice interventions.

A confrontation with law enforcement and juvenile justice may imply, for children, life long suffering caused for example by:

- stigmatisation (it may be very difficult to get rid of the label of young criminal, especially for children from minority or marginalized groups in society)
- the interruption of education, vocational training, or employment. The intervention of law enforcement and juvenile justice may stop these activities temporarily or even permanently. Children may be expelled from school, or are not longer welcome at their work place. Some children may find it very difficult to find a school or decent employment ever again.

Officials may plead that these consequences are not intended. However, the evidence is strong and drawn not only from recent occurrences. Therefore, there is no justification for not giving due consideration to the long-term consequences.

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<sup>39</sup> States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(...)

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

Regarding juvenile justice, the issues of death penalty and life imprisonment (2), as well as violence in detention (3), call specific attention.

## **b) Death penalty and life imprisonment**

Children are vulnerable, because they are in the critical stages of physical and psychological development. Although it is very difficult, or even impossible, to make comparisons between personal reactions of similar ill-treatment, children may suffer graver consequences following acts of torture than adults similarly ill-treated. Accordingly, death penalty and life imprisonment imposed on children might have much more serious effects on them, and need to be considered in the light of the special characteristics of children.

Although the use of the death penalty against children is prohibited under various international human rights instruments,<sup>40</sup> seven countries are known to have executed child offenders in the 1990s.<sup>41</sup> Such punishment, particularly with regard to detention on death row, as well as life imprisonment without possibility of release is not just in violation of international law, but amounts at least to cruel, inhuman or degrading punishment when applied to particularly vulnerable persons such as children.

It is not by accident that article 37 (a) of the Convention on the Rights of the Child prohibits not only torture or other cruel, inhuman or degrading treatment or punishment, but also capital punishment and life imprisonment without any possibility of release for offences committed by persons below eighteen years of age. The preparatory work to the CRC shows that these different acts must be seen as a whole. Attempts during the drafting process to divide the two sentences constituting article 37 (a) into two separate paragraphs were dismissed.<sup>42</sup> The view that the imposition of capital punishment on children was "inhuman ... treatment or punishment" and that therefore the paragraph was sufficiently homogeneous to be left as it stood, prevailed.<sup>43</sup> It is also worth noting that other human rights instruments deal with death penalty in connection with the right to life, rather than with the prohibition of torture and other ill-treatment.

With regard to children, it may be argued that even when there is a possibility of release, such as a presidential pardon, life imprisonment itself should be considered as contrary to the terms of article 37 (a) of the Convention. In this case too, condemned children are subjected to severe psychological suffering and their development, in particular their long term social and emotional development is deeply affected. Moreover, such a sentence, with or without the possibility of release, appears to infringe article 37 (b) of the Convention which states that the imprisonment of a child "shall be used only as a measure of last resort and for the shortest appropriate period of time".

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<sup>40</sup> Art. 6 (5) of the International Covenant on Civil and Political Rights, art. 37 (a) of the Convention on the Rights of the Child, art. 4 (5) of the American Convention on Human Rights, art. 5 (3) of the African Charter on the Rights and Welfare of the Child, rule 17 (2) of the U.N. Standard Minimum Rules for the Administration of Juvenile Justice, rule 3 of the UN Safeguards guaranteeing protection of the rights of those facing the death penalty.

<sup>41</sup> See Amnesty International, *Children and the Death Penalty*, November 2000, p. 1. Since 1990 executions of child offenders have been documented in the Democratic Republic of Congo, Iran, Nigeria, Pakistan, Saudi Arabia, the United States of America (USA) and Yemen. The Commission on Human Rights expressed its concern about this fact on several occasions (see e.g. Commission on Human Rights resolution 2001/68, E/CN.4/RES/2001/68, p. 2). The Sub-Commission on Human Rights resolution 2000/17 (E/CN.4/SUB.2/RES/2000/17, p. 2) calls upon the states that retain the death penalty against child offenders to remind their judges that the imposition of this punishment is in violation of international law.

<sup>42</sup> See Report of the Working Group on a draft convention on the rights of the child, E/CN.4/1989/48, para. 540. The Representative of the German Democratic Republic proposed that the two sentences constituting paragraph 1 should be divided into two separate paragraphs, saying that, as it stood, the first paragraph lacked homogeneity because it dealt both with manifest illegalities, torture etc., as well as with punishment pursuant to due process of law.

<sup>43</sup> E/CN.4/1989/48, para. 540.

For the same reasons, the death penalty and life imprisonment must be considered as incompatible with article 40 (1) of the Convention, through which “States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society”.

With regard to the case of a juvenile offender sentenced to death in violation of article 6 (5) of the International Covenant on Civil and Political Rights,<sup>44</sup> the Human Rights Committee held that the imposition of the death penalty was thus void *ab initio* and that his detention on death row constituted a violation of article 7 of the Covenant.<sup>45</sup> Holding a person on death row, during which time she/he suffers from the anxiety over her/his pending execution, may certainly amount to cruel and inhuman punishment prohibited by article 7 of the Covenant.<sup>46</sup> In the case of a child, this implies, in particular, that article 7 of the Covenant is violated, when detention on death row lasts longer than necessary for the domestic legal proceedings required to correct the error involved in imposing the death sentence.<sup>47</sup> Therefore, the only legal solution in this case is to recognize the illegality of the sentence as soon as possible in order to avoid violations of the right to life and the right not to be subjected to torture.

In the case of *Soering v. UK*, the European Court of Human Rights also pointed out that the present and mounting anguish of awaiting execution of the death penalty and the personal circumstances of the victim, especially his age at the time of the offence, were crucial factors contributing to a violation of article 3 of the European Convention on Human Rights.<sup>48</sup>

In view of the fact that article 37 (a) of the Convention on the Rights of the Child is based on article 7 of the Covenant,<sup>49</sup> it should be suggested that under the former of the two instruments, children, as a particularly vulnerable group, enjoy an even greater protection<sup>50</sup>. The notion of “torture or other cruel, inhuman or degrading treatment or punishment” therefore has to be understood in the context of the Convention on the Rights of the Child as encompassing capital punishment as well as life imprisonment.

### **c) Violence in detention**

Children deprived of their liberty, whether lawfully or unlawfully, are frequently subjected to various forms of violence, such as physical and psychological abuse and harsh conditions of detention, that amount to torture. According to Rule 11(b) of the UN Rules for the Protection of Juveniles Deprived of their Liberty, “the deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from

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<sup>44</sup> “Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women”.

<sup>45</sup> “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation”. See Human Rights Committee, Communication N° 592/1994, CCPR/C/64/D/592/1994, para 10.4.

<sup>46</sup> See Human Rights Committee, Communication N° 592/1994, CCPR/C/64/D/592/1994, p. 10.

<sup>47</sup> See Human Rights Committee, Communication N° 592/1994, CCPR/C/64/D/592/1994, Concurring Individual Opinion by member David Kretzmer.

<sup>48</sup> “No one shall be subjected to torture or to inhuman or degrading treatment or punishment”. *SOERING V. THE UNITED KINGDOM* (1/1989/161/217), para. 111.

<sup>49</sup> See Report of the Working Group on a draft convention on the rights of the child, E/CN.4/1986/39, para 90; DETRICK, p. 622.

<sup>50</sup> Accordingly, the criteria of “severe pain or suffering, whether physical or mental” amounting to torture has to be seen in a child-oriented perspective.

which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority”.

Typical scenarios of ill-treatment include physical beating by prison guards and interrogators; sexual assault; psychological abuse, such as threats of further beatings, sexual assault, and/or no release, and witnessing acts of extreme violence perpetrated against other detainees; placement in isolation cells, incommunicado detention; being tied to beds; position abuse; and physical abuse (beatings, knifings, etc.) and sexual assault (or the threat thereof) by other inmates. Also, the manner of arrest itself can constitute ill-treatment in certain situations, for instance, when masked soldiers and other security services forcibly remove the child from its home in the middle of the night and inform neither the child nor the family where he/she is being taken.

According to the UN Special Rapporteur on torture, “by far the most frequently expressed concerns with respect to children that have been conveyed to (him) are those relating to conditions of detention”.<sup>51</sup> The Special Rapporteur has specified that he “has received information indicating that some children have been subjected to lengthy periods of pre-trial confinement in police lock-ups and other places of detention. (...) Another problem, reported to be widespread in many regions of the world, is that of overcrowding of children’s cells, both in places of pre-trial detention and in prisons. (...) The lack of adequate space and facilities has in some situations resulted in children being held together with adult detainees or prisoners, a circumstance which leaves them vulnerable to violent attacks, as well as harmful influence. Even in situations where children are held separately, prison personnel may often lack the training to deal with the special requirements of juvenile detention.

Children are reportedly often detained in unsanitary conditions, leaving them exposed to the risk of disease and other health problems. In some cases, the children are not given adequate food, resulting in instances of malnutrition and, in extreme cases, starvation. (...) Many prisons and other detention centres where children are kept are also bereft of any or adequate medical facilities. Moreover, the absence of recreational and educational facilities may adversely affect the mental and emotional well-being and development of detained children”.<sup>52</sup>

The wide ranging effects and extent of physical and psychological abuse on children cannot be underestimated and must be at the forefront of all interpretations of torture. Frequently, such forms of abuse are applied jointly and while one manner of treatment alone may not constitute torture, taken as a whole, it does.

As such, a scenario whereby a child is forcibly removed from his/her home in the middle of the night by masked, armed soldiers (psychological), blindfolded and handcuffed (psychological/physical), placed in a jeep and taken to an unknown destination (psychological), beaten (physical), deprived of food (physical), deprived of sleep (physical), placed in position abuse (physical) or in isolation (psychological), threatened repeatedly with death or the death of family members or of never being released (psychological), repeatedly for a period of time, this entire system of abuse is severe and amounts to torture, whereas, any one of these acts taken separately, may not.

One might also consider larger contextual issues, such as systematic violence against the child’s ethnic/religious/national/gender/other group, which would add to the fear, based on systematic and common practice, at the time of arrest and exacerbate the effects of the treatment.

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<sup>51</sup> Report to the UN Commission on Human Rights, E/CN.4/1996/35, Follow-up to paragraph 5 of Commission resolution 1994/37 B, par. 11.

<sup>52</sup> *Ibid*, par. 11 and 12.

It is also important to examine the specific point in time at which the abuse is carried out within the arrest-interrogation-incarceration process. Physical and psychological abuse applied during the period of arrest and interrogation is more likely to cause pain and suffering of a severe nature (thus constituting torture) than if such abuse is applied during the period of incarceration. This is due to the fact that in the former period, the child is in an unfamiliar situation and has no clear idea of what is taking place and for how long he/she will be subjected to this treatment. The exception to this would be cases of administrative detention whereby children are detained for an unspecified period of time, and physical and psychological abuse is more likely to have severe and adverse effects on the child's future mental and physical development.

Finally, one must consider the pattern of abuse in terms of possible links between physical and psychological ill-treatment, whereby the former is applied in order to physically exhaust the child, which subsequently affects the psychological state of the child, thus exacerbating the effects of both types of ill-treatment.

The ill-treatment can come from a variety of actors, both civil and military. For example, the child may be tortured by soldiers upon arrest, by military/intelligence/police officials during interrogation, and by prison guards/police during incarceration. Other inmates may also subject the child to torture during imprisonment. In all cases, should such treatment occur, the State bears responsibility, either because public officials directly perpetrated the act or because these officials did not take the necessary measures to protect the child from other inmates.

With reference to purpose, the above-mentioned forms of abuse might occur either to obtain a confession from a child deprived of his/her liberty, to punish him/her for an act s/he or another person has committed or simply to induce fear or as a form of harassment. Furthermore, in the case of the targeting of particular groups, such as political prisoners, within the prison system, it may be argued that at the heart of the harassment is an attempt to punish the child prisoner for the actions of his/her larger group of people.

In the case of children deprived of their liberty, the UN Rules for the Protection of Juveniles Deprived of their Liberty and the UN Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") set forth clear recommendations regarding the treatment of children, in particular the conditions of detention. As recalled by the Committee on the Rights of the Child, these instruments provide relevant detailed standards for the implementation of article 37 of the CRC.<sup>53</sup> As such, they constitute a set of positive obligations which develop the contents of the States' obligation of due diligence to protect detained children against torture and other cruel, inhuman or degrading treatment or punishment.

Other issues to be examined regarding State responsibility include the patterns of violence imposed on children deprived of their liberty. If it is well documented that abuse and harsh conditions of detention are inflicted on children while in State prisons and detention centres over a significant period of time (thus, establishing a systematic practice), then the acquiescence of the State, and thus its responsibility, is clear from its failure to take the necessary measures to rectify the situation and provide adequate protection from such abuse.

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<sup>53</sup> See for example Report on the tenth session, October - November 1995, CRC/C/46, para. 214. Or see Report on the ninth session, May - June 1995, CRC/C/43, Annex VIII, p. 64.

#### **d) Violence in child institutions**

Many of the practices occurring in institutions for children amount at least to cruel, inhuman or degrading treatment or punishment.<sup>54</sup> Such practices are found both in state and private institutions, such as orphanages, homes for abandoned or disabled children or for street children, immigration detention centres and other non-penal custodial institutions.

Tying children in sacks, tethering them to furniture, confining them needlessly to beds, warehousing them in barren and windowless rooms, denying them available food, keeping them in unsanitary accommodation or inadequately clothed, denying them appropriate medical treatment or experimenting on them with drugs<sup>55</sup> – all constitute cruel, inhuman and degrading treatment. Physical and psychological abuse by staff, including sexual abuse, and negligent practices that facilitate sexual and physical abuse by other children, also violate the State's duty to protect children in its care from cruel, inhuman or degrading treatment. In some cases, beatings and other forms of punishment clearly amount to torture.<sup>56</sup> In the most serious situations, abuses and neglect may result in the death of the victims.

Such treatment or punishment not only violates the integrity and dignity of children, but also interferes with the development of their physical and mental health. Regarding intellectual development, when children in institutions are not allowed to follow the usual school process, their access to education and ability to learn may be affected, resulting in a violation of their right to education. For example, education may not be compulsory for children in institutions or the educational standards applied to them may be lower.

International responsibility must be established when the State fails to prevent and to respond adequately to this type of violence, whether occurring in state-run or private institutions. As stated by the UN Human Rights Committee, State responsibility exists whether the perpetrator acts in an official or a private capacity.<sup>57</sup>

In this regard, according to article 3 paragraph 3 of the Convention on Rights of the Child, States Parties have an obligation to adopt positive measures to protect children in institutions. This provision requires States Parties to "ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision".

#### **e) Violence in the school**

Schoolchildren are often forced to endure violence as part of their educational experience. Many children are beaten regularly by teachers, sexually assaulted and raped, and bullied by their peers. Such violence and abuse in schools frequently undermine children's opportunities to learn, cause children to drop out of school altogether, or cause psychological trauma, physical injury, disability and even death.

In at least sixty-five countries, corporal punishment is permitted as part of school "discipline." In others, prohibitions against the practice are routinely ignored. Teachers or principals subject children to caning, slapping, and whipping that can result in bruises, cuts, and

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<sup>54</sup> See Interim report of the Special Rapporteur of the Commission on Human Rights on the question of torture and other cruel, inhuman or degrading treatment or punishment, A/55/290, 11 August 2000, par. 11.

<sup>55</sup> See Report of the UN Special Rapporteur of the Commission on Human Rights on the question of torture and other cruel, inhuman or degrading treatment or punishment, E/CN.4/2001/66, 25 January 2001, par. 205.

<sup>56</sup> See Human Rights Watch, Submission to the Committee of the Rights of the Child for its Day of General Discussion on State Violence Against Children, September 22, 2000, p. 9.

<sup>57</sup> Human Rights Committee, General Comment 20 on art. 7 of the ICCPR, 10/04/92, par. 2.

humiliation. They also use solitary confinement or force children to stay in uncomfortable positions for long periods as a means of punishment. Students may be physically punished for misbehaviour, poor academic performance, tardiness, failure to pay school fees, and at times, for no reason at all. In some cases, children suffer serious injury, disability or even death as a consequence of such punishment.

Corporal punishment, verbal and other forms of abuse in schools can have a negatively impact on children's right to education. Studies have shown that corporal punishment is a direct cause of children dropping out of school. In Nepal, 14 percent of children claimed to have dropped out of school because they feared the teacher.<sup>58</sup> Children who are not beaten themselves but observe the humiliation of other children who are physically punished may also be reluctant to attend school.

Physical and mental punishment in schools may have long-term psychological consequences for children. Students who are subject to corporal punishment or verbal abuse – particularly in front of their peers – often experience humiliation and shame. In some cases, children have even committed suicide because of repeated humiliating treatment in schools.

Corporal punishment is not the only form of violence experienced by children in schools. Schoolchildren, particularly girls, may also experience sexual violence including assaults and rape by other students, teachers or principals. Schoolgirls may be fondled, subjected to aggressive sexual advances, and verbally degraded. A medical research study in South Africa found that among rape victims who specified their relationship to the perpetrator, 37.7 percent said they had been raped by their schoolteacher or principal.

Students may also be targeted for violence by their peers because of their gender, race, ethnicity, religion, nationality, caste, sexual orientation, social group, or other status. Upper-caste teachers may ridicule lower-caste pupils or single them out for physical punishment. Disabled children are often treated with contempt and physically or verbally abused. Children from marginalized groups, including those who are gay, lesbian or bisexual, are also frequent targets of bullying by other students.

Much of the violence endured by children in schools clearly meets the criteria for torture established by the Convention on Torture. It frequently results in severe pain or suffering, is intentionally inflicted, and is often perpetrated by school officials. Even when the perpetrators of violence are other children, States have failed in their established duty to protect students from cruel, inhuman or degrading treatment.

The Committee against Torture has indicated that corporal punishment is incompatible with the Convention against Torture. In 1993, the Committee stated "it was degrading treatment to apply corporal punishment in schools and other institutions. Children should be treated with respect for their integrity and teachers should be able to maintain authority without resorting to such primitive measures".<sup>59</sup>

The Human Rights Committee has also held that corporal punishment is a form of cruel, inhuman, or degrading treatment. In its 1992 General Comment on article 7 [prohibiting torture or cruel, inhuman or degrading treatment or punishment], the committee stated its view that the prohibition "must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure.

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<sup>58</sup> Haq, M. and Haq, K. (1998). "Human Development in South Asia." The University Press Limited. Dhaka.

<sup>59</sup> Report of the Committee against Torture, UN GAOR, 48<sup>th</sup> Sess., Supp., No. 40, para. 173, UN Doc. A/48/40 (1993).



It is appropriate to emphasize in this regard that article 7 protects, in particular, children, pupils and patients in teaching and medical institutions”.<sup>60</sup>

The Committee on the Rights of the Child has stated repeatedly that corporal punishment violates the fundamental principles of the Convention on the Rights of the Child. In 1994, the Committee stated that “in the framework of its mandate, the committee has paid particular attention to the child’s right to physical integrity. In the same spirit, it has stressed that corporal punishment of children is incompatible with the Convention.”<sup>61</sup> In its General Comment on article 29 (1) of the Convention, the Committee also stated that “Education must (...) be provided in a way that respects the strict limits on discipline reflected in article 28 (2) and promotes non-violence in school. The Committee has repeatedly made clear in its concluding observations that the use of corporal punishment does not respect the inherent dignity of the child nor the strict limits on school discipline”.<sup>62</sup> Members argued that the difficulties in drawing sharp lines between acceptable and unacceptable forms of corporal punishment require a total ban on the practice.

#### **f) Violence in the family**

The family is traditionally associated with warmth, security, and safety: a shelter, where peace and harmony are predominant. In reality, however, in every region of the world, children suffer from violence in the family, with devastating effects on the victims, their families and the community. Although the distinct social, cultural and political contexts give rise to different forms of violence in the family, its prevalence and patterns are remarkably consistent, spanning national and socio-economic borders and cultural identities.

Violence against children in the family takes various forms and dimensions, including physical, sexual and psychological abuse, such as incest, correctional abuse, abandonment of children for wrongdoing, forced labour in the family, and the sale of children by their parents for prostitution or bonded labour.

Both girls and boys are subjected to violence in the family. However, because of the difference in gender, girls and boys may experience different patterns of abuse and vulnerability, with girls often at higher risk of sexual abuse or forms of family violence. This includes “honour crimes”, female foeticide and infanticide, forced childbearing and forced abortions, son preference resulting in violence in the form of neglect, as well as traditional harmful practices affecting their health, such as female genital mutilation, virginity testing, early marriages, using girls as compensation for causing accidental death or murder so that they can give birth to provide children to the bereaved family, and bride price and dowry related violence. Boys can be discriminated against by legislation or social values that can make them subject to brutal forms of family “discipline” which are not applied to girls, or force them to commit an “honour crime”.<sup>63</sup>

Other factors giving rise to violence against children may be racial, ethnic, religious, national discrimination or socio-economic marginalisation. Children facing discrimination and/or marginalisation, and family violence, are much less likely to be identified and helped.

It is also important to note that family violence against children is not limited to violence perpetrated by the parents but also includes violence by grandparents, siblings, other

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<sup>60</sup> Human Rights Committee, General Comment 20, HRI/GEN/1/Rev.2 p. 31.

<sup>61</sup> UN Committee on the Rights of the Child, Report on the Seventh Session, UN Doc. CRC/C/34, Annex IV, at 63 (November 1994).

<sup>62</sup> Committee on the Rights of the Child, General Comment 1 on article 29 (1): The aims of education. 08/02/2001, par. 8.

<sup>63</sup> The term “gender” refers to the ways in which roles and attitudes, values and relationships regarding women and men are constructed; the social design of the biological and physical sex.

relatives, guardians or carers, neighbours, and family friends. Therefore, references to “family” and “domestic” should be understood within the local context and may include extended family and even communal units.<sup>64</sup>

In certain countries, violence against children in the form of corporal punishment is not considered as a crime and no legal sanctions exist against the perpetrator. In other countries, family violence is often dealt with under the laws of general criminal assault. But these laws ignore the fact that the violence takes place in the family, between persons with emotional and financial ties and therefore, more dependent on each other.

State policies, laws and inertia often perpetuate or condone gender-specific forms of family violence such as “honour crimes”, dowry and bride price related violence, female genital mutilation, virginity testing, early child marriages, wife battering and marital rape.

Even in cases where countries have specifically criminalized family violence against children in their legislation, much still depends on the role and the power of the police and other law enforcement officials and their willingness to prevent, investigate, prosecute and punish perpetrators of family violence. Family violence is often seen by them as a private issue.

In recent years, the international community has observed a significant increase of activity in and information on issues concerning family violence. While family violence was previously considered a private matter between individuals and not a human rights problem in the public domain, today many concrete commitments have been made to tackle family violence as a human rights violation at the international level. Although gender-based violence in the family has been given increased prominence at the United Nations level, violence against children has begun to receive heightened attention as a serious human rights issue and States are under the “due diligence” standard to ensure the prevention, investigation, prosecution and punishment of perpetrators.

As mentioned in the General Part on the interpretation of the notion of torture within the framework of the rights of the child, the “due diligence standard” has been generally accepted as a measure for evaluating State responsibility for violations of human rights by private actors. State responsibility for acts committed by private persons is based upon the State’s duty to exercise due diligence in preventing, protecting against, investigating, and punishing violations of human rights wherever they occur. One can argue that where severe pain or suffering is inflicted by private individuals and the State fails to exercise due diligence, there has been official “consent” or “acquiescence” to torture under article 1 of the Convention against Torture. However, up until now, the Committee against Torture has never addressed the issue of family violence.

As also mentioned in the General Part on the interpretation of the notion of torture within the framework of the rights of the child, the Human Rights Committee seemed, however, open to the inclusion of violence at the hands of private actors under the notion of torture, by stating in 1992 in General Comment 20, that “the aim of the provisions of article 7 of the International Covenant on Civil and Political Rights is to protect both the dignity and the physical and mental integrity of the individual. It is the duty of the State party to afford everyone the protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity”.<sup>65</sup>

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<sup>64</sup> See Committee on the Rights of the Child, 28<sup>th</sup> session (CRC/C/111), Discussion on “Violence Against Children, Within the Family and in Schools”, Friday 28 September 2001, Recommendation 1 (unedited version).

<sup>65</sup> Par. 2.

Moreover, in March 2000, the Human Rights Committee adopted a comprehensive General Comment, No 28, on equality of rights between men and women, which updates its earlier General Comment on that topic adopted in 1981.<sup>66</sup> In the concluding observations following the examination of the reports from States Parties, the Human Rights Committee put increasing emphasis on the necessity to adopt adequate measures to combat discrimination by private actors. In this light, in paragraph 11 of the General Comment, the Committee addresses the fact that much of the violence suffered by women is at the hands of private individuals and recognises that this violence can amount to torture, which is prohibited by article 7 in the Covenant. The paragraph reads: "To assess compliance with article 7 of the Covenant, as well as with article 24, which mandates special protection for children, the Committee needs to be provided information on national laws and practices with regard to domestic and other forms of violence against women, including rape. (...) In States Parties where the practice of genital mutilation exists, information on its extent and on measures to eliminate it should be provided. The information provided by States parties on all these issues should include measures of protection, including legal remedies, for women whose rights under article 7 have been violated".

The Convention on the Rights of the Child maintains the principle that parents and guardians assume the primary responsibilities and duties for the upbringing and development of children, with the necessary support of the State (see articles 5 and 18 of the Convention). The trend towards holding States responsible for actions by private actors is clearly reflected in article 19 of the Convention on the Rights of the Child. With regard to traditional practices, article 24 (3) of the Conventions reads: "States shall take the effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children."

#### **g) Sexual violence and related child trafficking**

Although children are being sexually abused or exposed to commercial sexual exploitation all over the world, there is no exact data on this global phenomenon.<sup>67</sup> This is due to the fact that the topic is very well concealed and highly sensitive. For instance, a recent ILO report states, with respect to the problem of quantifying the number of children in the worst forms of child labour (such as children in prostitution and pornography, trafficked children, children trapped in slavery and forced labour etc.) that: "... research on the subject has proven to be very difficult. This is due to the hidden and illegal nature of the activities associated with these types of child labour and the sensitivity of the issues. Children, families and communities are sometimes not in a position to reveal information due to the criminal nature of prostitution and trafficking. In addition, researchers have reported risks and safety problems in the data collection process".<sup>68</sup>

Many children are sexually abused by the adults who are supposed to protect them.<sup>69</sup> The bulk of sexual abuse outside the nuclear family is perpetrated by members of the extended family, friends of the family and carers. Children working outside their homes, especially on the street, and those involved in armed conflicts are particularly vulnerable to sexual abuse and violence.<sup>70</sup>

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<sup>66</sup> The complete text is available on the website of the Office of the High Commissioner for Human Rights: [www.unhcr.ch](http://www.unhcr.ch) and can be obtained under the symbol: CCPR/C/21/Rev.1/Add.10.

<sup>67</sup> See e.g. the report of ECPAT International, *Looking back, Thinking Forward 2000*, p. 15, 64 and 92. For definitions on sexual abuse see FOCAL POINT against Sexual Exploitation of Children, Definitions on child sexual abuse and related terms, <http://www.focalpointngo.org/>

<sup>68</sup> ILO report *IPEC Action Against Child Labour 2000 - 2001: Progress and Future Priorities*, p. 29 (traducción de la OMCT).

<sup>69</sup> Cf. Committee on the Rights of the Child, 28th session (CRC/C/111), Discussion on "Violence Against Children, Within the Family and in Schools" 2001, par. 12.

<sup>70</sup> See e.g. Amnesty International, *Sierra Leone, Rape and other forms of sexual violence against girls and women*, June 2000; CHINKIN CHRISTINE, Torture of the Girl-Child, in: Van BUEREN GERALDINE (Ed.), *Childhood*

The effects of such ill-treatment on the future of children are very serious. The most immediate danger they face is physical and mental violence. However, the long-term psychological impacts should not be underestimated.

In the case of a 17-year-old girl who had been raped in detention, the European Court of Human Rights stated: "Rape of a detainee by an official of the State must be considered to be an especially grave and abhorrent form of ill-treatment given the ease with which the offender can exploit the vulnerability and weakened resistance of his victim. Furthermore, rape leaves deep psychological scars on the victim which do not respond to the passage of time as quickly as other forms of physical and mental violence. The applicant also experienced the acute physical pain of forced penetration, which must have left her feeling debased and violated both physically and emotionally".<sup>71</sup>

Moreover, sexual violence against children can also be a result of commercial sexual exploitation. Sexual abuse becomes sexual exploitation when a second party benefits through sexual activity involving a child.<sup>72</sup>

Child trafficking is part of the problem of sexual exploitation. Article 3 (a) of the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the UN Convention against transnational organized crime, defines "trafficking in persons" as "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, (...)". Trafficking involves absence of free will and vulnerability, which could be through force, misrepresentation, financial transaction or other favour, and results in exploitation of the person trafficked. Trafficking may be conducted within the country or across national borders.

Article 2 (a) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography defines the sale of children as "any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration".

According to UNICEF, an estimated one million children enter the multi-billion dollar commercial sex trade every year. The 2001 report of the UN Special Rapporteur on the sale of children, child prostitution and child pornography mentions that in the Asian region alone, it is estimated that as many as 250'000 human beings are bought and sold each year.<sup>73</sup>

The Convention on the Rights of the Child is also a framework for the protection of children against sexual abuse and sexual exploitation. Article 19 commits States Parties to take all appropriate measures to protect the child from all forms of physical or mental violence, including sexual abuse.<sup>74</sup> Article 34 obliges governments to undertake to protect the child

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Abused, Aldershot etc. 1998, pp. 90-92; the Human Rights Committee (CCPR/C/79/Add.109, par. 15) concluded with respect of street children in Mexico: "These are the children who are at greatest risk of sexual violence and who are exposed to the practices of sexual trafficking".

<sup>71</sup> AYDIN V. TURKEY (57/1996/676/866), Judgment, 25 September 1997, par. 83.

<sup>72</sup> The three primary forms of commercial sexual exploitation of children are prostitution, pornography and trafficking for sexual purposes.

<sup>73</sup> Report of the UN Special Rapporteur on the sale of children, child prostitution and child pornography of 2001 (E/CN.4/2001/78), par. 11.

<sup>74</sup> SHARON DETRICK, A Commentary on the United Nations Convention on the Rights of the Child, The Hague/Boston/London 1999, p. 321 underlines that article 19 of the Convention is closely related to article 37 (a).

from all forms of sexual exploitation and sexual abuse.<sup>75</sup> Unlike other conventions on human rights, article 19 of the CRC *expressly* provides for the protection of children against violence and abuse even *within the private sphere*.

Considering the grave consequences children suffer following sexual violence, this form of violence might constitute an act of torture prohibited by article 37 (a) CRC, depending on the circumstances of the case. Accordingly, the UN Special Rapporteur on Torture states in his 2001 report that he had received information "regarding alleged acts of torture, including sexual violence"<sup>76</sup> and mentions that detainees were "reportedly subjected ... to torture, including rape and other forms of sexual abuse".<sup>77</sup> The European Court of Human Rights held, with regard to violence against a child in detention, that "the especially cruel act of rape ... amounted to torture in breach of Article 3 of the Convention".<sup>78</sup> The same may even be true for threats of violence (e.g. nightly repeated threats of rape against a child in custody).<sup>79</sup>

The effects of such treatment, both immediate and long-term, clearly constitute "severe pain or suffering, whether physical or mental" as defined as one element of torture in international law.<sup>80</sup> Not least in the light of the special characteristics of children and bearing in mind the secondary consequences on them, this threshold is likely to be reached in many cases involving sexual abuse. It should also be noted that rape and other forms of sexual violence by combatants are recognized as crimes against humanity when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack, as well as war crimes by the Rome Statute of the International Criminal Court.<sup>81</sup>

With regard to the nature of sexual violence, due to the fact that most cases involving children are not perpetrated by State but by private actors, the scope of responsibility of States must include acts of individuals acting in a private capacity, when such acts reveal a lack of due diligence on the part of the State.

This view is underlined in article 19 CRC, which commits States Parties to take all appropriate measures to protect the child from all forms of violence, including sexual abuse "while in the care of parent(s), legal guardian(s) or any other person who has the care of the child".<sup>82</sup> This highlights the State's responsibility to take effective measures to protect children from such violence, whoever the perpetrator.

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<sup>75</sup> In May 2000, the UN General Assembly also adopted the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography; in June 1999, the ILO Convention No. 182, Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour was adopted, which includes the sale and trafficking of children as well as the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances among these worst forms (article 3 a and b).

<sup>76</sup> Report of the UN Special Rapporteur on Torture 2001 (E/CN.4/2001/66), par. 621.

<sup>77</sup> Report of the UN Special Rapporteur on Torture 2001 (E/CN.4/2001/66), par. 899. See also FOCAL POINT against Sexual Exploitation of Children, *A reality turned upside-down: child sex workers*, p. 1, which states that the 1996 World Congress against the Commercial Sexual Exploitation of Children held in Stockholm "... made it clear that sexual exploitation represented an extreme form of sexual abuse, indeed, a *form of torture* ..." [emphasis added].

<sup>78</sup> Case of AYDIN V. TURKEY of the European Court of Human Rights (57/1996/676/866), par. 86; also cf. the case of RAQUEL MARTÍ DE MEJÍA V. PERÚ, (Case 10.970, Report No. 5/96) of the Inter-American Court of Human Rights, pp. 17-19.

<sup>79</sup> Such threat of sexual violence can cause serious mental pain and suffering amounting to torture; cf. the report of the UN Special Rapporteur on Torture 2001 (E/CN.4/2001/66), par. 1287.

<sup>80</sup> Cf. the definition of torture in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>81</sup> Art. 7 par. (g) and 8 par. 2 (b) xxii of the Rome Statute of the International Criminal Court, 17 July 1998.

<sup>82</sup> The latter group covers the personnel of public (penal institutions, state schools) as well as of private institutions, see DETRICK, p. 326.

## **h) Child slavery, bonded labour, and related child trafficking**

There is no complete data about children subjected to slavery and bonded labour in the world. However, some regional studies have clearly established that these practices are still common and now emerging under new forms almost everywhere.<sup>83</sup> In India, for instance, it has been reported that at least 15 million children are bonded labourers.<sup>84</sup> In Pakistan, of 20 million bonded labourers, an estimated 7,5 million are children.<sup>85</sup>

Slavery and bonded labour causes severe pain and suffering to child victims. As recalled by ILO, “of all working children, surely these are the most imperilled”.<sup>86</sup> The deprivation of liberty, generally linked to physical constraints, being treated as an object or a simple commodity of exchange and the lack of future prospects are forms of violence inherent to every kind of forced labour. However, the intensity of such pain and suffering also depends on various factors such as the type of work given to the children, the conditions in which they must perform it and the risks or abuse to which they are exposed in their activities.

As a peremptory norm of international law, the prohibition of slavery and bonded labour constitutes a principle clearly recognized by the international community.<sup>87</sup> According to international law, “slavery” is defined as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”.<sup>88</sup> Regarding “debt bondage”, it has been defined as “the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined”.<sup>89</sup>

Children, and especially the youngest, are particularly vulnerable both to the exploitation of forced and slave labour, as well as to physical, chemical and other hazards, to which they might be subjected in the workplace.<sup>90</sup> Children endure physical suffering through, inter alia, work that is beyond their physical capacity, , dangerous tools or machinery, exposure to toxic chemicals, motorized equipment, excessive noise levels, damaging vibrations or harsh climatic conditions.

Moreover, according to the circumstances, slavery and bonded labour may seriously affect the physical, psychological, social and intellectual development of the child. In such cases,

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<sup>83</sup> See ILO, *Stopping Forced Labour, Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and the Rights at Work*, 2001, par. 1. See also ILO, *Report VI (1), Child Labour: Targeting the Intolerable*, 86<sup>th</sup> Session 1998, p. 13.

<sup>84</sup> Human Rights Watch, *The Small Hands of Slavery, Bonded Child Labour in India*, September 1996, p. 1.

<sup>85</sup> ILO-IPEC, *Mainstreaming Gender in IPEC Activities*, 1999.

<sup>86</sup> ILO, *Report VI (1), Child Labour: Targeting the Intolerable*, 86<sup>th</sup> Session 1998, p. 13.

<sup>87</sup> In addition to art. 32 of the Convention on the Rights of the Child, see in particular:

- Art. 10 par. 3 of the International Covenant on Economic, Social and Cultural Rights,
- Art. 8 of the International Covenant on Civil and Political Rights,
- the Slavery Convention, 60 L.N.T.S. 253, entered into force on 9 March 1927,
- the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, adopted by a Conference of Plenipotentiaries done at Geneva on 7 September 1956 and entered into force on 30 April 1957,
- the Convention concerning Forced or Compulsory Labour, C 29, adopted on 28 June 1930, and
- the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, C 182, entered into force on 17 June 1999.

<sup>88</sup> Art. 1 par. 1 of the Slavery Convention.

<sup>89</sup> Art. 1 (a) of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery. More generally, the ILO Convention concerning Forced or Compulsory Labour, C 29, defines “forced or compulsory labour” as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily” (art. 2 par. 1).

<sup>90</sup> ILO, *Child Labour : What is to be done ?*, ITM/1/1996, 12 June 1996, par. 22.

both immediate and long-term consequences determine the intensity of the suffering endured by exploited children. In most situations, this suffering reaches the threshold of article 1 of the Convention against Torture.

For example, carrying heavy loads, sitting for long periods in unnatural positions and exposure to toxic emanations can permanently disable developing bodies and affect health. The fatigue experienced by exploited child workers also increases the risk of accidents, which may result in irreversible disabilities.

Bonded child labourers are often subjected to physical, mental and sexual abuse. Children are often whipped or beaten for making mistakes, working too slowly, asking about their wages, or trying to escape. Girls in particular are vulnerable to sexual abuse, which places them at increased risk of contracting HIV.

Furthermore, child victims generally work very hard for long hours, often in total isolation from family and friends. They endure considerable stress and anguish, which may result in deep depression, poor self-esteem, and inability to interact with others. This tendency may also be reinforced when the child is a victim of slavery and bonded labour as a result of being a member of a caste, an ethnic minority, or other discriminated group.

Children subjected to slavery and bonded labour are also generally prevented from attending school. Even when attendance at school is permitted, the excessive time dedicated to work and the psychological trauma related to the conditions of exploitation directly affect their capacity to learn. The demands of their work often leave them with neither time nor energy to attend school regularly or keep up with their studies.

Slavery and bonded labour are also related to the broad phenomenon of trafficking in persons. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children<sup>91</sup>, which supplements the UN Convention against transnational organized crime, defines "trafficking in persons" as "the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation".<sup>92</sup> The Protocol further specifies that "exploitation" includes, among others, "forced labour or services, slavery or practices similar to slavery (or) servitude".<sup>93</sup>

Although the trafficking process may not be coercive at the beginning, it always results in a form of violence, since its purpose is exploitation. In most cases, as highlighted by ILO, "labour trafficking may be seen as a contemporary form of debt bondage".<sup>94</sup> Although its intensity around the world has not been determined, it is evident that this phenomenon is widespread. In 2000 for example, 3000 Albanian children were trafficked to Italy and Greece in order to beg and clean windows and cars without payment.<sup>95</sup> In 1996, almost 200,000 foreign children from Burma, Laos and Cambodia were trafficked to Thailand for prostitution and work on construction sites and in sweatshops.<sup>96</sup> According to UNICEF, an estimated

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<sup>91</sup> Adopted on 15 November 2000, not yet in force.

<sup>92</sup> Art. 3 (a).

<sup>93</sup> Art. 3 (a).

<sup>94</sup> ILO, *Stopping Forced Labour, Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and the Rights at Work*, 2001, par. 147.

<sup>95</sup> Children's Human Rights Center of Albania, *The Vicious Circle*, 2000.

<sup>96</sup> Coalition Against Trafficking in Women, *Fact Book*, citing Mahidol University's Institute of Population and Social Research, "Trafficking of children on the rise", *Bangkok Post*, 22 July 1998.

200,000 children are trafficked every year in West Africa to work on coffee, cocoa or cotton plantations, in fisheries, as domestic servants, market vendors or prostitutes.<sup>97</sup>

State responsibility to prevent, to stop, to investigate and to punish slavery and bonded labour applies irrespective of whether the perpetrators are acting in an official capacity or as private individuals.<sup>98</sup> ILO Conventions prohibiting slavery and bonded labour cover situations where both State and private actors are involved. Regarding the latter, the ILO Convention 29, according to which States Parties must “suppress the use of forced or compulsory labour in all its forms within the shortest possible period”,<sup>99</sup> clearly provides that the competent authority shall not permit the imposition of forced labour for the benefit of private individuals, companies or associations.<sup>100</sup> It also provides that the illegal exaction of forced labour shall be punishable as a penal offence.<sup>101</sup>

In some cases, State agents are direct accomplices of slavery or bonded labour practices perpetrated by private actors. This happens, for example, when police officers bring run-away children back to their employers or when police or labour inspectors accept bribes for not investigating a case.

The overall international standards on child labour are contained in ILO Conventions 138 and 146, which inter alia set out the age benchmarks for the admission to employment. Given the close linkage between the incidence of child labour and violations of the rights of adult workers, the child labour standard must be taken in the broader context of the ILO Declaration on Fundamental Principles and Rights at Work, concerning freedom of association, collective bargaining and protection from forced labour, discrimination and child labour.

State responsibility for slavery and bonded labour includes an obligation of due diligence. ILO conventions provide that States Parties must adopt positive measures to secure the prohibition and elimination of these forms of child exploitation.<sup>102</sup>

#### **i) The right to access to justice and to reparation. Rehabilitation and reintegration of child victims**

Article 2 (1) of the Convention on the Rights of the Child provides that “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind (...)”. In particular, article 39 of the Convention on the Rights of the Child sets the duty of States Parties to “(...) take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child”. This implies that States must ensure the right of the victims to a remedy, including the right to access justice and to reparation. This results from the State obligation to prosecute and punish the perpetrators of violence against children.

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<sup>97</sup> UNICEF, News Note, Background on child trafficking, <http://www.unicef.org/media/newsnotes/01nn01.htm>.

<sup>98</sup> See ILO, Stopping Forced Labour, Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and the Rights at Work, 2001, par. 34.

<sup>99</sup> Art. 1 of the Convention concerning Forced or Compulsory Labour, C 29.

<sup>100</sup> Art. 5 par. 1.

<sup>101</sup> Art. 25.

<sup>102</sup> See art. 1 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery and art. 1 of the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, C 182, 1999.



According to the UN Report on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms, “States should provide victims of violations of international human rights and humanitarian law the following forms of reparation: restitution, compensation, rehabilitation, and satisfaction and guarantees of non-repetition”.<sup>103</sup>

These different ways of addressing the consequences of violence against children should not be seen as a purely legal approach. In particular, compensation should never be the only remedy. States response to the consequences of violence against children must also include medical, psychological and social support, in order to address all the needs of child victims in an appropriate manner. For this purpose, it is essential to seek and take into account children’s views and perception.

As children are dependent on adults, violence may deeply affect their trust in adults and in the existence in a just world. This is very difficult to repair. Moreover, children often do not have a clear understanding of why they were tortured. In particular, they might not have sufficient political consciousness which could help them to understand what had happened. On the other hand, although children are particularly vulnerable to violence, they also may have strength and resilience according to the circumstances.

Rehabilitation and reintegration should intervene as early as possible. The earlier, the better the prospects are for recovery. They require a sustained effort not only from the State, but also within the family, schools and the community.

People who have experienced torture are normally already part of a community. The community is also affected by the act against one of its members. All should be involved in resolving the problem of torture. Within the community, the child affected by violence becomes a catalyst for change, She/he can be an integral part of the process, being not only victim, but also an actor in the process, and this is very empowering for her/him.

Regarding street children, however, the need for rehabilitation and reintegration must be seen differently. As they have left their community or been rejected by it, specific solutions must be contemplated. Family reunification should be sought when it is in the best interest of the child.

In order to meet their international obligations, States must:

1. provide child victims with equal and effective access to justice;
2. enact legislation to provide appropriate reparation for child victims, including compensation, that is adequately tailored to individual context and circumstances and in the best interest of the child;
3. establish and strengthen programmes for the rehabilitation and reintegration of child victims of violence, which involves, *inter alia*, families, schools, the community and children themselves, and ensure that these programmes guarantee the fastest intervention possible.

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<sup>103</sup> Report on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms, Final Report of the Special Rapporteur, Mr Cherif Bassiouni, E/CN.4/2000/62, 18 January 2000.

## **International implementation of the rights of the child: Proposal for a UN Special Rapporteur on Violence against Children**

Because of their particular vulnerability, children need special protection against torture and other forms of violence under international law. This means that specific children's rights standards must be applied to them when general human rights are not adequate. The Convention on the Rights of the Child (the Convention) both asserts children's status as holders of human rights and adds specific provisions appropriate to children's special status. The Convention not only includes children's economic, social, cultural and civil and political rights, but also creates a specific monitoring mechanism, the Committee on the Rights of the Child (the Committee).

The mandate of the Committee is limited, since it only covers the examination of reports on the implementation of the Convention which States Parties must initially submit after the first two years and then every five years. Unlike some other UN Committees, the Committee is not mandated to examine individual complaints. Nor does it have any specific mandate to lead in-depth investigations on specific situations. Therefore, the enforceability of the Convention is weak. It is now indispensable to develop new ways of implementing the Convention both at the international and regional levels.

Other general human rights mechanisms do, of course, include children in their activities. However, their respective mandates are limited to certain rights. Moreover, their reports show that in practice they rarely adopt a child-oriented perspective. As a result, while the monitoring role of the Committee on the Rights of the Child is of vital importance, there is still no international mechanism able to globally and systematically address the rights of the child.

The establishment of a Special Rapporteur on violence against children would help to fill this gap. The example of the international fight against torture shows that the mandates of the UN Committee against Torture and of the UN Special Rapporteur on torture are complementary. Both mechanisms provide different ways of fighting the same phenomenon. If this were true in the case of torture, it would be contradictory to deny it in the case of violence against children. Such consideration is particularly important if we consider that the Convention against Torture defines torture in a way which is not sensitive to the special status of children.

The Committee on the Rights of the Child has already emphasized the necessity that "effective measures be sought in order to strengthen existing UN human rights mechanism to ensure that violence against children and the situation of children living and/or working in the street is adequately addressed".<sup>104</sup> For this purpose, it encouraged the Office of the High Commissioner for Human Rights to organize a special workshop to examine, among other aspects, the possible need for "the establishment of a new "special procedure" of the Commission on Human Rights".<sup>105</sup>

The establishment of a new Special Rapporteur and the drafting of the international study on violence against children, which has been recommended by the UN General Assembly, the Commission on Human Rights and the Committee on the Rights of the Child, should remain

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<sup>104</sup> Committee on the Rights of the Child, Day of General Discussion on State Violence Against Children, 22 September 2000, Part II par. 5 and Day of General Discussion on Violence Against Children, Within the Family and in Schools, 28 September 2001, Part II par. 12.

<sup>105</sup> Ibid.

separated. However, collaboration, in particular the sharing of information, should be ensured.

### **The appointment of a UN Special Rapporteur to address violence against children**

The participants at the Tampere Conference recommended that the UN Commission on Human Rights appoint a Special Rapporteur on Violence against Children in order to, *inter alia*, solicit, receive and exchange information and communications, including individual complaints and on systematic violations, from all relevant sources, including from children themselves, on any form of violence or ill-treatment they may be subjected to, as well as its causes and consequences; to undertake investigations; and to take appropriate, including urgent, action. The Special Rapporteur should, as part of his or her work, interact with all relevant UN mechanisms, relevant regional bodies and national and international NGOs, and seek the views of children.

#### **a. Scope of activities**

The Special Rapporteur on Violence against Children should, among other things, examine torture and other forms of violence committed by agents of the State or with their acquiescence. He/she should also focus on State violence resulting from negligence on the part of State agents and from failure to exercise due diligence to prevent, investigate, prosecute or punish those responsible for violations of the rights of the child.

One of the most difficult tasks in creating a Special Rapporteur on Violence against Children would be to establish the scope of his/her activities. The notion of violence against children is not clearly defined and thus is open to different interpretations. According to article 19 of the Convention on the Rights of Child, this notion includes “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse”. With respect to her/his scope of activities, it would be very difficult to make a list of the forms of violence that the Special Rapporteur should address. If this list is too restrictive, it may exclude forms of violence which affect a wide number of children and unduly prioritise certain forms of violence to the detriment of others. Conversely, if it is too broad, the Special Rapporteur will not have the resources and time to do more than a superficial survey of the issue.

Moreover, in order to avoid overlapping activities, the Special Rapporteur’s scope of activities should be established taking into account the work of other related UN thematic mechanisms, such as, in particular, the Special Rapporteur on Torture, the Special Rapporteur on the sale of children, child prostitution and child pornography, the Special Representative of the Secretary-General for children and armed conflicts and the Special Rapporteur on violence against women.

In particular, the scope of activities should not include sexual violence, since, with the exception of the question of some forms of adoption, this would empty the mandate of the Special Rapporteur on the sale of children, child prostitution and child pornography of any content.

Bearing in mind these preliminary remarks, the scope of the Special Rapporteur’s activities could extend, *inter alia*, to:

1. Physical and psychological violence in police custody and other places of detention
2. Physical and psychological violence caused through the deprivation of liberty
3. Physical and psychological violence in schools, orphanages or other institutions, both public and private
4. Physical and psychological violence in the family

5. Physical and psychological violence in the workplace
6. Physical and psychological violence against children living and working on the streets
7. Physical and psychological violence which may be caused by the judicial process before and during the trial
8. Criminal sanctions that could amount to violence against children (including the use of capital punishment and life imprisonment)

This list is non-exhaustive and is aimed at providing the Special Rapporteur with examples of issues that should be of concern to him/her.

In order to fulfil this task, the Special Rapporteur would develop her/his activities in the light of the Convention on the Rights of Child, other international instruments and other relevant international standards, such as the UN Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), the UN Guidelines for the Prevention of Juvenile Delinquency (“The Riyadh Guidelines”) and the UN Rules for the Protection of Juvenile Deprived of their Liberty.

### **b. Mandate**

The Special Rapporteur should carry out her/his mandate respecting the confidentiality of the identity of the child. For this purpose, the identity should only be disclosed to the Government, in order for the latter to take the necessary actions, but not in the Special Rapporteur’s public reports.

The responsibilities of the Special Rapporteur could be fulfilled by:

1. seeking, receiving and publicizing credible and reliable information from governments, UN bodies, specialized agencies, regional intergovernmental organizations, NGOs and other organizations, as well as medical, forensic and other experts;
2. receiving individual communications;
3. resorting to urgent action procedure when it is known that a serious violation of children’s human rights is about to be committed;
4. undertaking investigations and/or appointing regional representatives to investigate allegations of violence and abuse, actively seeking the views of the children themselves, and making reports and recommendations to the government involved;
5. monitoring the implementation of existing standards, including States’ obligation to prevent, stop, investigate and punish acts of violence perpetrated against children, as well as to provide adequate compensation and promote recovery and reintegration of the victim;
6. facilitating, through its good offices, the restoration of an attitude of respect for the Convention on the Rights of the Child and for other instruments aimed at protecting children against violence;
7. educating and advising states on bringing their law, policy and practice into line with the Convention on the Rights of the Child and other relevant standards;
8. making annual reports to the UN Commission on Human Rights, detailing findings, as well as conclusions and recommendations on ways and means to provide better protection of children from violence;
9. drawing particularly serious cases to the attention of the High Commissioner for Human Rights;
10. recommending provisions, measures and activities, including on prevention, rehabilitation and reintegration, at the national, regional and international level with a view to preventing, punishing and eliminating all forms of violence against children as well as addressing their causes and consequences;

11. cooperating closely with the UN Committee on the Rights of the Child, with other relevant UN bodies and specialized agencies and with the expert in charge of the UN study on violence against children, as well as with regional organizations and NGOs, so as to avoid, in particular, duplication of activities;
12. compiling and analysing existing rules and norms, root causes of the problem, prevention and long-term solutions, taking into account specific situations.

## **Proposal for a framework of the UN study on violence against children**

Following its days of general discussion on violence against children, held in September 2000 and September 2001, the Committee on the Rights of the Child recommended that the UN General Assembly initiate a comprehensive international study on violence against children.

Based on these discussion days, the Committee recommended that such a study should be as thorough and influential as the 1996 study on the Impact of Armed Conflict on Children, conducted by Mrs. Graca Machel. In addition, it recommended that the study:

- a. "Be guided by the Convention on the Rights of the Child and other relevant international standards and take full account of the recommendations adopted by the Committee at its days of general discussion, held in 2000 and 2001.
- b. Document the different types of violence of which children are victims, the prevalence of such violence and its impact on children, adults and societies. Areas of study should include violence within the family and home, in schools and care or residential institutions both State and private, in work situations and in the streets, in detention facilities and prisons, violence by police and the use of capital and physical punishment. Violence should include all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, including sexual abuse, bullying in schools and corporal punishment. Attention should be paid to the impact of discrimination (including inter alia, discrimination based on gender, race, economic status, etc) on the patterns of violence and vulnerability experienced by children.
- c. Seek to identify the causes of and contributing factors to violence against children, including factors – such as the role of legislation, public education and training of professionals - that contribute to or obstruct prevention, protection and recovery, and explore the links between different provisions of the Convention on the Rights of the Child and other international human rights treaties in relation to violence against children.
- d. Draw primarily on existing research and documentation, including reports to and of the Committee on the Rights of the Child, Special Rapporteurs and other UN and UN-related bodies, including UNESCO, UNICEF, UNIFEM, UNFPA and WHO, and studies conducted by academics, research institutions and non-governmental organizations. The study should collect information on different human rights mechanisms and UN bodies and agencies and the extent to which the problem of violence against children is addressed in those activities from a human rights perspective.
- e. Be conducted in collaboration with all UN agencies and bodies, and particularly the Committee on the Rights of the Child, OHCHR and the UN human rights mechanisms, UNICEF, WHO, UNESCO, as well as with relevant non-governmental organizations, academic institutions and international professional organizations, and involving children themselves.

On this basis, and taking into account information on the effectiveness of existing approaches, the study should lead to the development of strategies aimed at effectively preventing and combating all forms of violence against children, outlining steps to be

taken at the international level as well as by States to provide effective prevention, protection, intervention, treatment, recovery and reintegration".<sup>106</sup>

On 25 April 2001, the UN Commission on Human Rights adopted resolution 2001/75 on the rights of the child, welcoming the recommendation by the Committee for an in-depth study. In paragraph 17 of the resolution, the Commission:

"Notes with appreciation the initiative of the Committee on the Rights of the Child on State violence against children, welcomes the upcoming general discussion in September 2001 on the theme of violence suffered by children in schools and within the family, and welcomes the recommendation by the Committee on the Rights of the Child that the Secretary-General should be requested, through the General Assembly, to conduct an in-depth study on the issue of violence against children, inter alia the different types of violent treatment of which children are victims, identify their causes, the extent of such violence and its impact on children, and put forward recommendations for action, including effective remedies and preventive and rehabilitation measures;"

In its 56<sup>th</sup> session, the UN General Assembly also decided:

"To request the Secretary General to conduct an in-depth study on the issue of violence against children, taking into account the Outcome of Special Session of the General Assembly on Children, and to put forward recommendations, for consideration by member states, for appropriate action, including effective remedies and preventive and rehabilitation measures;"

The Machel study on the Impact of Armed Conflict on Children illustrates the possible impact of such an international study, and its potential to galvanize international attention and action. The Machel Study is widely credited with drawing significant international attention to issues related to children and armed conflict, prompting the drafting of the optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, and resulting in the appointment of the Special Representative to the Secretary-General on Children and Armed Conflict as an on-going mechanism to promote the protection, rights and welfare of children at every phase of conflict.

The major objectives of this study would be to:

- assess existing knowledge and research on violence against children;
- make all forms of violence against children visible and draw international attention to the issue;
- present effective strategies to reduce and prevent violence and develop an international plan of action to end violence against children;
- present specific recommendations on effective measures to ensure reparation, rehabilitation and reintegration of child victims.

The international study should include specific performance indicators. In the case of violence in detention, for example, these indicators should include numbers in custody, delay in pre-trial detention, violence prevention strategies, the cost-effectiveness of institutional as compared to rehabilitation programs, the level of legal compliance with international norms, the level and quality of training of all relevant staffs.

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<sup>106</sup> Committee on the Rights of the Child, 28<sup>th</sup> session (CRC/C/11 1), Discussion on "Violence Against Children, Within the Family and in Schools", Friday 28 September 2001, Part II par. 7.

A methodology should be established for conducting the study, which will have the perspective of children as its focal point.

Children should be allowed to participate in the preparatory process of the international study.

Discussion on the need for new mechanisms to address violence against children within the UN should proceed, even when the international study materializes. If a new Special Rapporteur on Violence against Children is appointed, collaboration with the expert in charge of the study, in particular the sharing of information, should be ensured.

The most difficult debate for proponents of the study is defining its scope. Too restrictive an approach could lead to less than comprehensive solutions. Conversely, too broad a scope might dilute the impact of the study and excessively prolong its completion. In particular, the study should examine violence against children, having a gender perspective, in the home, in schools, in orphanages and other state institutions, in work situations, in detention facilities, jails and prisons, on the streets, violence by police, violence against trafficked children, and the use of capital punishment. Violence should be interpreted to include, inter alia, executions, torture, abuse, corporal punishment, beatings, bullying, sexual violence, neglect and negligent treatment, self inflicted violence and suicide.

Taking into account the various forms of violence against children, the conclusions of the international study should differentiate between the different needs of child victims, in particular in terms of prevention, reparation, rehabilitation and reintegration.

The study should also pay attention to the structural causes of violence against children including the denial of social, economic and cultural rights, which is exacerbated by globalisation, and resulting in increased poverty and inequality.

Because a significant amount of research and documentation on violence against children already exists, the study should draw on existing sources, including reports to and by the Committee on the Rights of the Child, Special Rapporteurs and other UN and UN-related bodies, including UNICEF, ILO and the WHO, and studies conducted by academics, trade unions and non-governmental organizations. Such research should be supplemented by field visits by a special expert appointed by the Secretary-General.

In order to proceed, the Secretary-General should appoint a special expert to carry out the study, supported by UN bodies such as UNICEF or the Office of the High Commissioner for Human Rights. Funding for the study would most likely stem from voluntary contributions by UN members states or UN agencies.