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# Rights of the Child

Report of a Training Programme in Asia



**International Commission of Jurists**  
Geneva, Switzerland  
September 1993

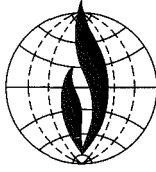
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## Preface

In September 1993 a training programme was held in Lahore, Pakistan, for persons working in children's organizations in Asia. It was organised by the International Commission of Jurists (ICJ) and the AGHS Law Associates, Lahore.

The participants who came from Bangladesh, Bhutan, Cambodia, China, India, Indonesia, Japan, Malaysia, Mongolia, Nepal, Pakistan, Philippines, Singapore, South Korea, Sri Lanka and Thailand included lawyers and representatives of organizations working on children's rights. A member of the Committee on the Rights of the Child and representatives from the ILO, UNICEF, UNESCO and the UN Centre for Human Rights attended as resource persons.

The ICJ has been involved in children's issues for a long time. In 1959 the UN gave official recognition to the human rights of children by adopting the Declaration of the Rights of the Child, and in commemoration of the twentieth anniversary of this Declaration, 1979 was designated the International Year of the Child.

As part of this celebration a conference was organized in Warsaw, Poland, in January 1979 by the Polish Association of Jurists, the International Association of Democratic Lawyers and the ICJ. The Conference approved unanimously a statement of 21 principles on the legal protection of the rights of the child. These principles were submitted in February 1979 to the Working Group of the UN Commission on Human Rights which was preparing a draft Convention on the Rights of the Child (CRC).

The ICJ was part of the NGO group on the drafting of the CRC which was an informal association of approximately 30 international NGOs having consultative status with the UN Economic and Social Council. The CRC came into force on 2 September 1990. As the

Convention foresees a specific role for NGOs in its implementation, the NGO group decided to assist in the implementation of the Convention.

Shortly after the Convention came into force, the Defence for Children International (DCI) and the ICJ, at the invitation of the International Association of Penal Law, held an international seminar on the implementation of the Convention with special reference to the exploitation of child labour, bonded labour, trafficking and sale of children.

The Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in June 1993 calls for universal ratification of the CRC by 1995 and urges States to withdraw reservations which are contrary to the object and purpose of the Convention or to international treaty law. It also calls for international cooperation and solidarity to support the implementation of the CRC and urges that the rights of the child be a priority in the United Nations system-wide action on human rights. The important role played by NGOs in the effective implementation of all human rights instruments and, in particular, of the CRC is also recognised.

The purpose of this training programme was to follow up the recommendations of the abovementioned conferences and forms part of ICJ's programmes in Asia on paralegal training and providing legal services to the rural poor and other disadvantaged groups. The objectives of this training programme were:

- to provide a forum for the exchange of experiences on the situation of children in different Asian countries and on the work being done in developing human rights education material for children;
- to discuss international mechanisms for the protection of children's rights, including the CRC.

This publication contains the papers presented by the resource persons and the participants; the background paper; a paper on the reservations of Asian States Parties to the CRC prepared by Mr Bruce Abramson; and the recommendations.

We thank Justice Khalil Ramday of the Lahore High Court for

having attended the closing session. We are also very grateful to the AGHS Law Associates for their assistance in organizing the programme. We were greatly saddened to learn of the sudden demise of Mr Per Tegmo (former Secretary General of the Defence for Children International, who attended the programme as an observer), shortly after the training programme. His assistance at the programme was invaluable and we will always remember him for his enthusiasm and his deep commitment to children's rights.

The ICJ also wishes to express its gratitude to EKD (Germany), SIDA (Sweden) and the Dutch Ministry of Foreign Affairs whose financial contributions enabled us to undertake this project and publish the report.

Adama Dieng  
Secretary General

20 September 1994

# PART I

## **Resource Persons Papers**

## **The Committee on the Rights of the Child - its Activities and the Role of the Non-Governmental Organizations (NGOs)**

*Marta Santos Pais*

Member  
The Committee on the Rights of the Child

Three years ago, the General Assembly of the United Nations adopted the Convention on the Rights of the Child, following long consideration by a working group of the Commission on Human Rights. At that time, and in spite of the enthusiasm of some delegations in New York, no one could guess the impact this instrument would have in the future.

The Convention was born as an instrument of consensus and compromise between different legal systems and cultural traditions, out of respect for universally recognised human rights, and although it was to be assumed that it would not face any strong resistance, since no State wants to be considered an enemy of children, it was hard to guess that it would be so widely accepted. The reality is, however, that the same spirit of consensus which had enabled its adoption, has prevailed and the Convention is now a reference guide and an on-going legal framework for the promotion and protection of the rights of the child.

This universal acceptance is undoubtedly reaffirmed by the unprecedented number of ratifications of the Convention by countries from all the regions of the world, showing a common political will to realise the rights of children and establishing a natural atmosphere for dialogue and a chain of solidarity towards the accomplishment of the shared purpose of giving the rights of the child a real meaning.

The Convention on the Rights of the Child has a very special political value, first of all, for its international acceptance by a growing number of States, more than 140, committed to respecting

and ensuring, in their respective jurisdictions, the rights recognised therein; further, for its constant inclusion in the international agenda, i.e. being a constant subject for discussion in different fora and constituting a reference framework, as the World Summit for Children held in New York in September 1990 clearly showed and the World Conference on Human Rights so openly reaffirmed. Moreover, it has a unique capacity to gather, at the national level, different sectors of activity around a common endeavour, thus giving a comprehensive approach to the considerations of child policies.

It is evident that in view of the importance attached to the question of the best interests of the child, it must be given primary consideration in all actions concerning the child, whether undertaken by administrative, judicial or even legislative bodies.

### **The new approach of the Convention to children's rights**

The Convention has envisaged the rights of the child not in opposition to the rights of adults or as an alternative to the rights of parents, but as an integral part of human rights, established within the framework of the Universal Declaration of Human Rights and as a means of contributing to a world of peace, dignity, equality and solidarity.

The child is therefore seen not only as a vulnerable human being needing special assistance and protection, which is the approach of previous instruments (in particular the Declaration of 1959), but also as the subject of fundamental rights and freedoms, having the right to express his or her views and seeing those views taken into consideration, being informed and consulted, and sharing decisions with adults - in a word, having the right to participate in the decision-making process affecting his or her life.

The Convention has set up a holistic approach to the rights of the child. In an innovative way, civil, political, economic, social and cultural rights are included in the same text, all being necessary for the full and harmonious development of the personality, and inherent to the human dignity of the child. For this reason, the Convention is often presented as a charter on children's rights.



However, while recognising a diversity of rights of such a different nature, the Convention has not established any hierarchy, or given any priority to the implementation of some to the detriment of the others. In fact, each is recognised as of equal importance.

Consequently, we believe that prior to the study of any specific situation or the consideration of any strategy to implement policies for children, there is a need to be aware of the comprehensive reality, in the light of the diversity and interaction of the fields and rights covered by the Convention. Only this global approach will allow us to consider specific areas of action in an accurate way, or to address the underlying causes of problems affecting children.

Another important aspect is the non adversarial approach of the Convention to children's rights. In fact the implementation of the provisions stresses the need for dialogue and constructive action rather than a punitive attitude. In this spirit, the Convention joins advocacy for children's rights with the strengthening of national movements and alliances for children and opens them to international cooperation and the provision of technical assistance.

This perspective leads to the building up of a spirit of partnership among all those working with and for children, governmental departments, non-governmental organizations and international bodies, as in the case of UNICEF.

The indivisibility of the rights of the child paves the way for an effective interaction between the different sectors and bodies acting in the field, either when considering strategies for implementation, campaigns of advocacy and training, or when establishing programmes for technical assistance.

At present there is an extraordinary amount of enthusiasm for the rights of the child, and although we should be aware of the fact that the Convention does not have the magic power of solving all the existing problems, it is undeniable that it has clearly shown a unique capacity for ensuring an enlightened comprehensive vision of the reality and for creating a framework for meaningful action and dialogue, at both the national and international level.

## **Responsibility of the State**

By adhering to or ratifying the Convention on the Rights of the Child, the State makes a solemn commitment before the international community to create the necessary conditions for the effective exercise of the rights recognised therein. It thus undertakes a special responsibility and remains thereafter the fundamental actor in the implementation process.

In the light of the Convention, we may say the responsibility of the State is twofold:

- The State is expected to work towards a certain goal, that is, to respect and ensure the rights set forth in the Convention, for each child under its jurisdiction, without discrimination of any kind.
- To achieve such a purpose, the State has to adopt measures, be they legislative, administrative or in areas such as education or social action. These measures will have to be appropriate to the implementation of each of the rights recognised, while respecting all the others. At the same time, a maximum amount of available resources will have to be allocated to ensure the implementation of the rights of the child.

## **Reporting system of the Convention**

- 1 In order to examine the progress made by State parties in the realisation of the rights recognised, the Convention has established a Committee on the Rights of the Child. This is a new treaty body within the UN system which has the opportunity of benefiting from the experience of other similar human rights bodies, while facing the challenge of acting quickly, in order to meet the level of world-wide enthusiasm and expectations this Convention has engendered and to make use of this special momentum of political willingness.

The Committee was entrusted with important tasks in the promotion and protection of the rights of the child:

- Some tasks are designed to ensure a better understanding of the provisions and principles of the Convention - as, for example, the formulation of general comments and/or general recommendations, or the organizing of days of general discussion, of which one - on the involvement of children in armed conflict - has already taken place and another - on the economic exploitation of children - will soon follow. All of these activities are intended to clarify the contents of the Convention.
- Other tasks are specifically linked to the Committee's activities as a supervisory body, monitoring the way State parties implement the Convention through a system of constructive dialogue and assistance in order to help identify difficulties and point to possible solutions or ways of mobilising resources.

In this framework, the Committee is entrusted with a decisive and important task - the promotion of international cooperation and solidarity, and the consideration and implementation of forms of technical assistance and advice. The Committee is in fact well placed to play a catalysing role in this area, encouraging a constructive dialogue and combined action between States, UN agencies and other competent bodies, such as NGOs.

- 2 To help the Committee carry out this task, every State undertakes to submit to it periodic reports on the different measures adopted to give effect to the rights covered by this instrument. These reports should contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in every country concerned.

Thus, reports are expected to provide information on:

- the diversity of measures adopted in order to bring national law and practice into line with the provisions of the Convention and to ensure a growing improvement of the level of implementation (Article 44 paragraph 1);
- the progress made in the enjoyment of the rights of the child, this being an indication of the effectiveness of the measures adopted (Article 44 paragraph 1);

- the factors and difficulties that may have affected the degree of fulfilment of the obligations undertaken by the State under the Convention (Article 44 paragraph 2).
- 3 In view of the importance of this activity, which gives a real meaning to the Convention, and in order to assist governments in the preparation of their reports, the Committee on the Rights of the Child adopted *General Guidelines on initial reports of State parties*, to be submitted within two years of the entry into force of the Convention. Up to now, the Committee has considered six initial reports (Bolivia, Vietnam, Egypt, Sudan, Sweden and Russia).

These reporting guidelines are intended to provide guidance to each State party in the preparation of its initial report, minimise the risk of insufficient information and ensure consistency and uniformity in the form and content of the report.

The guidelines are also designed to underline the relevance of the reporting process. In fact, by reporting, States are not simply satisfying a formal obligation under the Convention, although in doing so they are also naturally reaffirming their international commitment to respect and ensure the rights of the child, while establishing an open and meaningful dialogue with the Committee on the Rights of the Child. As the Committee has pointed out, State parties are in fact expected to regard the process of preparing a report as a particular and important occasion on which to conduct a comprehensive review of the various measures undertaken to harmonise national laws and policies with the Convention, and to ensure a monitoring action on a regular basis. Within this framework, the reporting system will allow:

- the identification of existing problems;
- the consideration of new policies;
- the establishment of new targets.

Such an occasion should thus be used by governments both to monitor their own achievements and to encourage public scrutiny of their policies.

The Convention itself has included an innovative follow-up system, specifying the need for States to make their reports widely available to the public in their own countries.

Such a measure will reflect the transparency of both the supervisory process and government policies, while allowing the recognition of progress and attracting support for areas where a particular need is felt. Furthermore, it will contribute to a wider popular participation, providing an opportunity for government officials and independent advocates to act together, or in a complementary way, to achieve the common goal of improving the level of implementation of children's rights.

- 4 It is in this context that some States have established a national focal point on the rights of the child, to coordinate policies relating to children and to monitor the implementation of the Convention - an implementation measure to which the Committee has attached a particular interest in its guidelines and which seems to benefit from the support of many different countries world-wide.

This national focal point, which is often composed of the different governmental and non-governmental institutions acting in this field, may in fact represent an important network of information on the situation of the rights of the child, as well as coordinate and provide consistency for the activities developed by the different participating institutions, and ensure a meaningful dialogue with the national community, strengthening its capacity to monitor and evaluate progress.

The focal point may play an important role in areas such as:

- the dissemination of information on the Convention, increasing public awareness and creating the necessary atmosphere to turn the new approach to children as subjects of rights into a reality;
- the preparation of national periodic reports, ensuring that these are based on reliable, complete and specific data and that the national reality is described objectively;
- the monitoring of the implementation, including through the

dissemination of the State's national reports the suggestion for changes necessary for the improvement of children's rights, both in the legislation and in practice, and the consideration of a strategy for children's policies.

In view of the above, the National Plans of Action, prepared in the light of the World Summit for Children, constitute an extremely important tool, since they establish specific benchmarks which enhance progress and measure performance - namely in the areas of child health, nutrition and education. They are a meaningful illustration of a strategy which aims to give reality to the ethical and legal framework which the Convention provides.

- 5 Throughout this process, the availability and accuracy of data concerning the implementation of the rights of the child is of utmost importance.

In fact, in order to ensure a real evaluation and monitoring of the policies designed to implement the Convention on the Rights of the Child, and to prevent the misuse of existing resources or inappropriate measures being taken, every State must carefully study its specific situation. Only in this way will it be in a position to ascertain the kind of programme of action it should envisage, together with the goals it should achieve, to ensure progressive improvement of children's rights.

However:

- some fields covered by the Convention are traditionally considered as non-measurable and therefore do not benefit from any particular statistical or other evaluation, as for example civil rights and freedoms or the right of participation;
- some others are not even seen as meaningful for children; this is very often the case in areas referring to the family or the role of the parents;
- in some other cases data exist but are not easily accessible; there may be a lack of timely collection and publication of disaggregated data, or there may be an absence of compiled data which reflects the action taken by all the different

institutions involved. In addition, there are cases where statistics are presented for political purposes, based on chosen criteria shaped to ensure a particular picture of the reality.

The above shows what an important role may be played in this field by NGOs and organizations such as UNICEF, which may strengthen the capacity for collecting information in areas which governmental sources distort or may seek to ignore.

Another essential area where UNICEF and NGOs can decisively enhance the implementation process is by spreading the new message the Convention has brought. This new approach to the rights of the child is a challenge, in view of the traditional consideration of childhood as simply a stage before adulthood and the child as a non-participator in the decisions affecting his or her life, requiring solely measures of protection or assistance. It is also a challenge to the traditional view of activities for children as being simply the provision of services and, lastly, it is an obligation in the light of the Convention itself (Article 42).

Here again, advocacy for children's rights and social mobilisation must be encouraged, since they enable the training of staff and the reshaping of programmes to be launched, and strengthen national alliances for children.

In this framework we must welcome the recent establishment of a coordinator in the NGO secretariat on the Convention on the Rights of the Child, a liaison post which will undoubtedly contribute to a better flow of information between the Committee and the NGO world, be it at the national or international level.

**Suggestions on the Utilisation of United Nations  
Human Rights Mechanisms by Non-Governmental  
Organizations (NGOs) Concerned  
with Children's Rights**

*Fiona Blyth-Kubota<sup>1</sup>*

Human Rights Officer, Centre for Human Rights  
United Nations

*I wish to dedicate this paper to the memory of Per Tegmo. He was an individual who lived by the principles of human rights, especially the respect for human dignity, and who gave much of his life to the cause of children's rights. A fitting tribute to his efforts would surely be for us all to strive even harder to encourage and assist in the implementation of the rights of the child.*

The Convention on the Rights of the Child is a human rights treaty carrying legal obligations for States which are a party to it. It is the first human rights treaty to have obtained wide acceptance rapidly. Since its adoption in November 1989, 152 States have become a party to it.

Although many groups working with children have been campaigning for years for children's rights to be respected, it is only with the adoption of the Convention that interest has been expressed by children's groups in learning more about the work of the United Nations in the human rights field. The International Commission of

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1 The author is expressing her personal opinions in this paper; as such, these views may not necessarily reflect the position of the United Nations.



Jurists (ICJ) has organized this meeting in Pakistan in response to the need for children's groups to gain greater knowledge of the work of the UN in the field of human rights and how they may use its mechanisms. As Mrs. Santos Pais, an expert member of the Committee on the Rights of the Child, has described in great detail the methods of work of the Committee on the Rights of the Child, this paper will attempt to complement the information she provided and briefly point out the possibilities available for recourse to other UN procedures. In addition, the paper will focus on up-to-date information as regards the activities being developed by NGOs to improve the impact of their work for the better implementation of the rights of the child not only within the UN arena but also at the national level.

The ideas presented in this paper should also be read in conjunction with the background information provided by the ICJ to participants in this meeting. A quick reading of this material reveals that there is a plethora of mechanisms available for use in the UN. It is, therefore, most important that groups identify the potential value of each mechanism so that they can choose which is the most appropriate for each particular children's concern and understand how they might make use of it.

With this objective in mind a number of important points require immediate clarification. Firstly, certain procedures and mechanisms demand that information be presented only by NGOs having a particular status with the UN, that is ECOSOC<sup>2</sup> status, while other mechanisms welcome input from national non-governmental and other groups. In simplistic terms one may say that to speak as a non-governmental organization at UN meetings such as the Commission on Human Rights or the Sub-Commission on Prevention of Discrimination and Protection of Minorities, requires ECOSOC status. However, there are mechanisms of these bodies which actively seek and receive complaints from the relatives or lawyers of victims of serious human rights violations, as in the case of disappearances,

torture or summary executions. Secondly, international human rights treaty bodies such as the Committee on the Rights of the Child are interested in receiving input from national NGOs which do not necessarily have ECOSOC status. This fact has not yet been adequately broadcast to the NGO community and thus many NGOs have remained ignorant of this development. Equally, many NGOs concerned with children's rights have been unaware of the existence of three mechanisms, in addition to the Committee on the Rights of the Child, which deal either exclusively or to a large extent with children's rights. They are the Working Group on Contemporary Forms of Slavery, the Special Rapporteur of the Commission on Human Rights dealing with questions related to the sale of children and the United Nations Voluntary Trust Fund on Contemporary Forms of Slavery. I shall attempt to address all these matters in the following pages.

### **Working Group on Contemporary Forms of Slavery**

The United Nations Working Group on Contemporary Forms of Slavery meets for eight days in May each year. It is composed of five members of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The Working Group listens to many statements from NGOs on the situation of children in exploitative economic situations. For NGOs the relative advantage of raising issues in this Working Group is due to its low position on the hierarchical ladder of UN human rights bodies, which has resulted in its being more receptive to taking NGO statements and suggestions for action into account. As a result some of the recommendations forthcoming from the Working Group and emerging in resolutions for action to be taken by the Sub-Commission or a higher human rights body emanated from suggestions by NGOs. Traditionally this Working Group has benefited from the participation of many groups from South and South-East Asia which have been dealing with the issues of debt bondage, child prostitution or child labour.

The organizational information presented below provides an indication of the ranking of the Working Group within the framework of the UN organs dealing with human rights. (The ranking is from the

highest to the lowest decision-making body.)

General Assembly  
ECOSOC  
Commission on Human Rights  
Sub-Commission on Prevention of Discrimination and  
Protection of Minorities  
Working Group on Contemporary Forms of Slavery

One may discern from this simplified account of the structure of UN human rights organs that the Working Group is a subsidiary body of the Sub-Commission, which in turn is a subsidiary body of the Commission on Human Rights and so on. Thus, in many cases the recommendations forthcoming from the Working Group require approval from higher decision-making bodies. Some of the Working Group's recommendations have received the requisite authorisation from the Commission on Human Rights, ECOSOC and the General Assembly, resulting in the establishment of new UN mechanisms for the promotion and protection of human rights. Two such examples are: the Special Rapporteur on questions relating to the sale of children, child prostitution and child pornography of the Commission on Human Rights; and the United Nations Voluntary Trust Fund on Contemporary Forms of Slavery. Before moving on to a description of these mechanisms, it is of interest to note that the Working Group, at its most recent session in 1993, recommended that youth organizations as well as young persons from various NGOs be encouraged to participate in its meetings. This recommendation, having received the necessary support of the Sub-Commission, hopefully will be actively and appropriately followed up by NGOs. The member of the United Nations Secretariat following developments with respect to contemporary forms of slavery is Mr. Luca Lupoli, who may be contacted at the Centre for Human Rights.

**Special Rapporteur on questions relating to the sale of children, child prostitution and child pornography**

Mr. Vitit Mutarbhorn (Thailand) was appointed Special Rapporteur on the sale of children, child prostitution and child

pornography in 1990. He presented his first report to the Commission on Human Rights in 1991. The Special Rapporteur's report contains information on the general situation of children in the world regarding child prostitution, child pornography and the sale of children. His report also contains details of urgent appeals sent out to States. For example, in his 1993 report there is a summary of the urgent appeal sent to the United Arab Emirates on the question of the use of children as camel jockeys. This issue is now meeting with a positive response from the international community but it should always be recalled that any positive reaction to these appeals often depends on the political willingness of the governments concerned to address the issue. Governments cannot be forced to take action.

Besides reporting on children's issues from information gleaned from written materials alone, the Special Rapporteur can also undertake field missions when invited by States to do so. Up to now, the Special Rapporteur has undertaken visits to the Netherlands, Brazil, Australia and Nepal. The reports of such missions appear in Annexes to his main report.

### **United Nations Voluntary Trust Fund on Contemporary Forms of Slavery**

The United Nations Voluntary Trust Fund on Contemporary Forms of Slavery is a new body. It was only established in 1992 and held its first meeting in 1993. The Voluntary Fund is mandated to help representatives of NGOs attend the sessions of the Working Group on Contemporary Forms of Slavery and to extend, through established channels of assistance, humanitarian, legal and financial aid to individuals whose human rights have been severely violated as a result of contemporary forms of slavery. Thus, it is of great interest for NGOs to request funding from the Fund for their programmes or participation in the Working Group.

The members of the Board of Trustees determine the use of the Voluntary Trust's funds. The five members of the Board are:

Mr. Swami Agnivesh	(India)
Mr. Michel Bonnet	(France)

Ms. Eugenia Zamora Chavarria	(Costa Rica)
Ms. Tatiana Matveeva	(Russian Federation)
Mr. Cheik Saad-Bouh Kamara	(Mauritania)

For further information on the Fund, correspondence should be addressed to the Chief of the Legislation and Prevention of Discrimination Branch of the Centre for Human Rights.

### **Special procedures of a thematic or country nature**

Beyond the child-focused mechanisms mentioned previously, there are other procedures of a thematic or country nature which do not exclude receiving and responding to information on violations affecting children. For example, in the case of the wrongful detention of a child, information could be sent to the Working Group on Arbitrary Detention, and information on the execution of street children could be sent to the Special Rapporteur on summary, arbitrary or extra-judicial executions.

The mandate of the thematic procedures is to follow human rights violations in any part of the world. This very important feature of their function has often led to them being described as "extra-conventional procedures," for - unlike the treaty bodies - they are not restricted to monitoring developments only in States which are party to the appropriate human rights instrument.

Below is a partial list of some of these so-called special procedures or extra-conventional mechanisms with the names of the special rapporteurs or members appointed to fulfil the mandates.

### **Working Group on Arbitrary Detention**

Members:

Mr. Louis Joinet, Chair	(France)
Mr. Roberto Garreton, Vice-Chair	(Chile)
Mr. Laity Kama	(Senegal)

Mr. Kapil Sibal	(India)
Mr. Petr Uhl	(Czech Republic)

### **Working Group on Enforced or Involuntary Disappearances**

#### **Members:**

Mr. Ivan Tosevski, Chair	(Fed. Yugoslavia)
Mr. Jonas K.D. Foli	(Ghana)
Mr. Diego García Sayan	(Peru)
Mr. Agha Hilaly	(Pakistan)
Mr. Manfred Nowak	(Austria)

### **Special Rapporteur on questions relating to torture**

Mr. Nigel Rodley	(United Kingdom)
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### **Special Rapporteur on questions relating to extra-judicial, summary or arbitrary executions**

Mr. Ndiaye	(Senegal)
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### **Special Rapporteur relating to the sale of children**

Mr. Vitit Mutarbhorn	(Thailand)
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### **Special Rapporteur on religious intolerance**

Mr. Amor	(Tunisia)
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### **Special Rapporteur on racism, racial discrimination and xenophobia**

Mr. Glele-Ahanhanzo	(Benin)
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### **Special Rapporteur on freedom of opinion and expression**

Mr. Hussein

(India)

### **Special Rapporteur on Myanmar**

Mr. Yokota

(Japan)

### **Special Representative on Human Rights in Cambodia**

Mr. Justice Michael Kirby

(Australia)

Most of the mechanisms detailed above have been developed by the UN Commission on Human Rights and report to this body, which normally meets once a year, from the end of January to the beginning of March.

Many NGOs follow the meetings of the Commission on Human Rights precisely because NGOs with ECOSOC status can speak under the many agenda items of the Commission, including those relating to the mandates of the thematic rapporteurs and working groups. This facility for NGOs to bring human rights problems to the attention of international bodies is especially important when a particular State is not a party to major international human rights instruments. It is equally important for NGOs to be given the opportunity to raise human rights matters within the Commission if the State is a party to major international instruments but is not fulfilling its reporting obligations or when the situation within a particular State has deteriorated in the period between the presentation of reports to the treaty bodies.

It has to be noted, however, that many NGOs have not been aware of the potential complementarity of the use of both the treaty body system and the extra-conventional mechanisms in addressing human rights issues. This may be due primarily to the fact that human rights treaty bodies in the past were not so "open" to developing ties with the NGO community as was the Commission and that NGOs were more familiar with and attracted to the public statement-making activities of the Commission. NGO contributions to the treaty bodies

are of a different nature in that NGOs are not given the floor to make statements during the consideration of a State party report; only the members of the Committee are expected to ask questions of State parties. Yet it is possible to argue that well-researched and adequate NGO information on a country situation is more vital for the effective functioning of the treaty bodies than for any other human rights body, for if a Committee's members are ill-informed about the human rights situation existing within each individual country whose report is coming up for examination, this will be discernable in the inappropriateness of the questions they are asking of the State party's representatives and the unsuitability of the Committee's recommendations and suggestions for action within a given State.

It may be deduced, therefore, that the full use of both the treaty body systems and extra-conventional mechanisms by NGOs would assist in the development of the *de facto* early warning systems on human rights matters and enhance the effectiveness of follow up to the decisions and recommendations on human rights matters emanating from all the different human rights bodies.

### **Human rights treaty bodies**

There are six major human rights treaties which have established Committees to monitor the progress made in particular human rights matters. The Committee on the Elimination of Racial Discrimination (CERD) was set up under the International Convention on the Elimination of All Forms of Racial Discrimination; the Human Rights Committee was established under the International Covenant on Civil and Political Rights. There also exists a Committee on Economic, Social and Cultural Rights, which monitors the implementation of the International Covenant on Economic, Social and Cultural Rights. The Committee Against Torture (CAT) follows the actions taken by States parties to implement the provisions of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The Committee on the Elimination of Discrimination Against Women (CEDAW) concerns itself with monitoring the implementation of the Convention on the Elimination of All Forms of Discrimination



Against Women. A list of selected Asian countries which are parties to the major human rights instruments can be found below.

All of these Committees, apart from CEDAW, meet in Geneva and hold one, two or three sessions per year. The main function of the different Committees is to examine the human rights situation in the countries which have accepted the treaty on the basis of reports received from those countries. The Committees normally receive reports from States parties at two-yearly (for the initial report) and five-yearly (for other reports) intervals.

The Committees have a membership of either 10, 18 or 23 experts. Often the expert members meet prior to each Committee session (in pre-sessional working groups) to study the State party reports. During the pre-sessional working group, the members identify the questions they wish to have answered by the State party's representatives whose reports are to be examined by the Committee at the next session. Often the Committees choose to ask questions to the State party which are based on information they have received from NGOs and inter-governmental organizations.

The list of written questions to be answered by the State party is sent to the State's representatives in advance of the Committee's session. At the session the Committee listens to the replies of the State party's representatives to the list of written questions. The Committee also expects to receive replies to any questions the members have raised orally with the State's representatives.

Many Committees now prepare observations based on their discussion of the State party reports. These observations are made public at the end of each Committee session. Two types of observations are prepared by the Committee on the Rights of the Child: "preliminary" or "concluding" observations. In those cases where the Committee wishes to resume consideration of the report with the State party, it adopts preliminary observations. Out of 11 State party reports considered so far, the Committee has opted for preliminary observations in three cases, those of the Sudan, Indonesia and Rwanda. Otherwise, the Committee decides to produce concluding observations on the consideration of the State party report. These observations normally contain four or five parts: an introduction, positive aspects, factors and difficulties impeding

implementation of the Convention, principal subjects of concern and suggestions and recommendations.

The Committee expects the State party, during the five years before the next report is due, to follow up the suggestions and recommendations for action incorporated in the concluding observations. As mentioned earlier, in order to ensure that the concluding observations contain the most appropriate suggestions for activities, the Committee relies heavily on reliable information from various sources, including NGOs.

### **Status of international human rights instruments Selected countries from the Asian region**

	ICESCR	ICCPR	OP.1	OP.2	CERD	CRC	CEDAW	CAT
Bangladesh					X	X	X	
Bhutan					S	X	X	
Cambodia	X	X			X	X	X	X
China					X	X	X	X
India	X	X			X	X	X	
Indonesia						X	X	S
Japan	X	X				S	X	
Malaysia								
Mongolia	X	X	X		X	X	X	
Myanmar						X		
Nepal	X	X	X		X	X	X	X
Pakistan					X	X		
Philippines	X	Xa	X		X	X	X	X
Republic of								
Korea	X	Xa	X		X	X	X	
Singapore								

	ICESCR	ICCPR	OP.1	OP.2	CERD	CRC	CEDAW	CAT
Sri Lanka	X	Xa			X	X	X	
Thailand						X	X	
ICESCR	International Covenant on Economic, Social and Cultural Rights							
ICCPR	International Covenant on Civil and Political Rights							
OP.1	First Optional Protocol to the ICCPR							
OP.2	Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty							
CERD	International Convention on the Elimination of All Forms of Racial Discrimination							
CRC	Convention on the Rights of the Child							
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women							
CAT	Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment							
X	Ratification							
S	Signature not yet followed by ratification							
a	Declaration recognising the competence of the Human Rights Committee under Article 41 of the ICCPR.							

### **NGOs prepare information for the Committee on the Rights of the Child**

The different Committees have actively begun to seek contributions from NGOs and other organizations. Thus, information complementary to that contained in the States parties reports has been submitted by NGOs, professional organizations and coalitions of NGOs.

The Human Rights Committee has, for example, received documents separately prepared by different groups established in the Republic of Korea and Japan, containing alternative information to that contained in the respective States parties reports, whereas the Committee on the Rights of the Child has generally received

complementary information to that contained in the States parties reports from a coalition of NGOs working on children's rights at the national level, as has occurred in the case of Bolivia, Sweden, Peru, Mexico and El Salvador (one may note that nearly all these NGO coalitions come from Latin America).

In addition to the Committee receiving written information from these coalitions of national NGOs, representatives of the national coalition of organizations even came to meet and speak personally to the members of the Committee on the Rights of the Child. It should be understood, however, that the Committee prefers to meet with the NGO coalition representatives at its one week pre-sessional working groups, when it draws up the list of questions to send to States whose reports are going to be examined at its next session, and not during the session itself, when the State's representatives will be before the Committee.

It is to be hoped that, in the future, NGOs, professional and other organizations in all the States parties to the Convention on the Rights of the Child will be able to organize themselves into national coalitions of groups working on the rights of the child and present comprehensive information covering their views on the situation of children in their country to the Committee. The preparation of such comprehensive information would obviously assist in facilitating the Committee's understanding, as well as that of the national and international community, of the implementation of the rights of the child within a given country.

So far, the information presented to the Committee by NGOs has in essence provided the Committee with an overview of their views on the situation of children in their countries, and of the main problems they have identified as affecting children. The NGOs have also indicated where they believe there is a need to modify legislation to bring it into conformity with the Convention's principles and provision. It may be interesting if, in the future, information could also be provided by NGOs on the projects which have or have not been successful in the country and should or should not be emulated elsewhere.

It must be recalled that in order to be carefully read and fully taken into account by the Committee's members, information from

the coalition group should ideally be presented to the Committee at least six months in advance of the Committee's examination of the State party's report. It is important to be aware that the Committee has on average only three meetings, lasting three hours each, to discuss all aspects of the rights of the child with each State party and to come to conclusions on the discussion.

If the goal of preparing substantive alternative information is to be met, it requires that non-governmental groups within the States parties to the Convention begin organizing themselves immediately to prepare information for the Committee, as most States parties reports are due to be submitted within the next two years.

In the aforementioned context, I believe the following point is worth repeating and should always be borne in mind: as the Convention on the Rights of the Child covers all human rights, it is to be hoped that in the future, national coalitions of organizations concerned with children's rights will not only consist of traditional groups working for children but will also be representative of medial associations, development organizations (involved with planning and establishment of services providing for example, clean water and sanitation), teachers' organizations, headmasters' associations, social workers' organizations, media personnel, persons interested in curriculum development, lawyers' groups, etc. Of course this is no easy task and will undoubtedly take much time and effort to accomplish, but it may be argued that it is a goal worth pursuing and more attainable within the context of children's rights than other human rights.

It is evident that the sharing of information between NGOs and the Committee should not simply be seen as one-directional; it should be a two-way process. The NGOs and the Committee on the Rights of the Child have realised that an organizational structure is required to ensure that a system of sharing information between the Committee on the Rights of the Child and NGOs will work in the future. They have, therefore, supported the initiative to establish an NGO coordinator on the rights of the child. In September 1993 the post of a coordinator for the NGO Group on the Rights of the Child was established in Geneva. Mrs. Laura Theytaz-Bergman was appointed to this post. Her office is based in the Geneva office of the NGO,

Defence for Children International at 1, Rue de Varembe, Geneva, Switzerland.

It is the intention of the Committee on the Rights of the Child to keep this coordinator informed of the submission of reports to the Committee. It is the expectation of the Committee that the coordinator will contact the coalition of NGOs within the given country of the expected date of the examination of the country's report by the Committee and inform it as to when and what information should be sent to the Committee by the national coalition of NGOs.

When a given State party's report has been considered by the Committee on the Rights of the Child it will also hopefully be the task of the coordinator to send the press releases concerning the State party report's examination to the national coalition so that it may invite journalists to write about the Committee's discussions on the situation of children in the country. UN press releases are available the day after the Committee's meeting.

Additionally, it would seem appropriate for the coordinator to send to each national coalition a copy of the Committee's observations on the implementation of the Convention in its country. The suggestions and recommendations for action to be taken by the State party can hopefully be used by the NGO coalition to press for changes within its country in order to improve the situation of children.

The Convention on the Rights of the Child is the only convention so far to have interested a sufficient number of NGOs to cooperate at the national level and to organize themselves into coalitions to prepare information for the Committee on the Rights of the Child. In order to encourage the development of this initiative it may be interesting for NGOs to be aware of how a national coalition developed and presently operates. This information is presented below. It is understood that not all the activities undertaken by this national coalition of children's NGOs and its *modus operandi* will be easily emulated, nor would it necessarily be appropriate to do so.

## **An example of a national coalition of NGOs on children's rights**

Only very recently a representative of a Swedish NGO called Rätts Barnen visited the UN Centre for Human Rights. She explained that Rätts Barnen had been the main driving force behind the development of a coalition of NGOs on children's rights in Sweden. She presented information on a number of initiatives which had been undertaken by her organization and the national coalition to monitor the implementation of the rights of the child in Sweden. As an example of the possibilities open to NGOs to lobby and apply pressure on policy-makers and others to follow up on the promises made at the World Summit for Children and through the ratification of or accession to the Convention, it is useful to be aware of the activities they have instituted.

Rätts Barnen closely follows the debates and passage of legislation in parliament. In order to influence decisions taken by parliament and government on child-related matters, Rätts Barnen meets regularly with members of parliament; the identification of focal points on children's issues within each of the seven political parties in the Swedish parliament has assisted in this task. Furthermore, in an effort to promote greater awareness among NGOs and other interested groups as to children's issues being raised in Parliament, a newsletter providing such details is published by Rätts Barnen.

Apart from the work being undertaken by Rätts Barnen to support and encourage the implementation of children's rights there is also an NGO child convention group which operates as a national coalition of NGOs in Sweden concerned with children's issues. It consists of a core group of six organizations which works with a network of 45 NGOs from all over Sweden.

The NGO child convention group has been in existence since 1985; at that time it was very much involved in following the drafting process of the Convention on the Rights of the Child. Since then the NGO group has been involved in a number of activities relating to the implementation of the Convention. For example, between November 1989 and February 1990, before ratification took place in Sweden, the

NGOs provided their comments on the Convention to the Swedish government in accordance with the government's request for such contributions from various ministries, authorities and NGOs. All the comments were published in Government Bill 1989/1990:107 entitled "Acknowledgement of the United Nations Convention on the Rights of the Child."

Following the ratification of the Convention on the Rights of the Child by Sweden, the NGOs have actively assisted the government in the implementation of Article 42 of the Convention, which relates to the obligation of States to make the principles and provisions of the Convention known to adults and children alike, as the government earmarked approximately \$5.45 million to enable voluntary organizations to publicise and promote the Convention. As a result, school material for children 6 to 18 years old, informing them of their rights, was produced and tested out in three different cities in Sweden. The material is now being updated and is to be made available throughout Sweden from January 1994 onwards. This work is being financed by the Ministry of Health and Social Affairs.

Sweden's initial report to the Committee on the Rights of the Child was prepared during the spring and summer of 1992, contributions having been sought from ministries, authorities and NGOs. A press conference was called by the Ministry of Health and Social Affairs the day after the Swedish government's submission of its report.

Following the publication of the Swedish government's report on the implementation of the rights of the child, the NGOs met and decided to submit their comments on the report's contents to the Ministry of Health and Social Welfare and to the Committee on the Rights of the Child.

The Swedish government's report was considered by the Committee at its third session, in January 1993, at which concluding observations were adopted.

The NGO group considered it important to follow up on the contents of the concluding observations adopted by the Committee. It thus decided to prepare a report on its concerns and suggestions for action in the spring of 1993. The NGO report was sent to the Swedish



government for consideration. The government was also invited to take part in a hearing and discussion with the NGOs on the points covered in the NGO report.

The NGO hearing took place in May 1993. Around 100 people attended the meeting, including four Ministers, an Under-Secretary of State and other government officials who replied to the questions raised in the NGO report. The NGOs considered that the meeting was particularly constructive and fruitful. They decided that such a meeting would be organized yearly.

During the spring and summer of 1993 the Ministry of Health and Social Affairs invited several NGOs to assist in the formulation of information strategies on the Convention. At present there are apparently plans to develop school materials on the Convention.

Later, in July 1993, the Swedish government appointed a children's ombudsman. The ombudsman is expected to follow matters relating to the rights and interests of children. Children themselves will be able to communicate with the ombudsman if they believe their rights are being violated.

Since the autumn of 1993, the NGO group has concentrated on its yearly hearing with governmental officials and will produce a report on the deliberations and outcome of the meeting. In order to facilitate its work on promoting and protecting children's rights, the NGO group and network keep in regular contact, meeting once each spring and autumn to exchange information and ideas.

Lastly, the NGO group and its network are considering expanding their membership to include teachers and other professional groups as well as children.

### **Preparing NGO information on the rights of the child for other human rights committees**

It is probably useful for NGOs at the national level to prepare alternative information for Committees other than that on the rights of the child, if their country is a State party to other major human rights treaties, as at least five years may elapse between the consideration of the first and second report to the Committee on the Rights of the

Child. National NGOs instituting such a practice may find it most useful when the situation in a given country requires careful scrutiny and monitoring. Equally, it would provide an opportunity to monitor the progress made by a State party in following up the recommendations and suggestions made to it by other Committees.

If such an initiative is taken by NGOs it is important that they prepare information in the light of each Committee's mandate and the provisions and principles of the international instrument the Committee is monitoring. For instance, if a State is a party to the International Covenant on Economic, Social and Cultural Rights, the Committee on Economic, Social and Cultural Rights may raise its concerns on primary health care and primary education in that State and may refer to any suggestions or recommendations that the Committee on the Rights of the Child may have made in this regard. At present only very few NGOs have shown an interest in this Committee; one such NGO, called Habitat International Coalition, deals with matters relating to the right to housing, including forced evictions.

It is also feasible to imagine that issues relating to the rights of ethnic, national or linguistic minorities and indigenous children can be raised in the Committee on the Elimination of All Forms of Racial Discrimination (CERD). In an effort to improve the coordination of NGO information for this Committee, an organization called the Anti Racism Information Service (ARIS) has been set up. This organization states that it serves human rights groups and individuals by, *inter alia*, making official UN documents available to them; informing them that their country's reports will be discussed at a forthcoming session and about the possibility of submitting information to the expert members of the Committee; reporting on the outcome of the discussion of their country's report; also sending UN press releases immediately after the discussion by CERD to the major news media in the countries concerned. For those interested in contacting this organization, its address is: ARIS, 14, Avenue Trembley, 1209 Geneva, Switzerland.

The overlapping of articles relating to the rights of the child within various human rights treaties is yet to be addressed by different committees. A proposal emanating from the Committee on

Economic, Social and Cultural Rights that this matter should be discussed has been welcomed by the Committee on the Rights of the Child; however, a meeting between the different committees on this subject has yet to be organized.

The Committee on the Rights of the Child follows closely the work of other committees and the UN bodies in general and regularly puts forward proposals for action in the light of recent developments. The following paragraphs give an indication of the wide and varied interests of the Committee on the Rights of the Child.

### **Other matters and concerns being addressed or considered by the Committee on the Rights of the Child**

The Committee on the Rights of the Child holds general discussion days once a year. It is expected that the NGO coordinator will in the future contact NGOs interested in the themes of these days. So far the Committee has held a general discussion day on the issues of children affected by armed conflict and the economic exploitation of children. The next general discussion day will be held in September/October 1994. The theme of the general discussion day has been chosen in the light of the fact that 1994 has been designated the International Year of the Family. Thus, the topic discussed was the family environment and the role of the family in the promotion of human rights within the framework of the rights of the child.

In order to further pursue the ideas flowing from the general discussion day, the Committee has set up a working group to put forward recommendations and suggestions on these matters. The Working Group on Economic Exploitation is composed of the following members of the Committee on the Rights of the Child: Mrs. Marta Santos Pais, Mr. Thomas Hammarberg, Mrs. Akila Belembaogo and Mgr. Bambaren-Gastelumendi.

The Committee has also established several other working groups composed of various Committee members to consider different matters. They are:

Urgent procedures:	Ms. Marta Santos Pais, Mr. Thomas Hammarberg and Ms. Akila Belembaogo;
Revision of guidelines:	Mr. Yuri Kolosov, Ms. Flora Eufemio and Ms. Sandra Mason
Working methods:	Mr. Thomas Hammarberg, Mr. Yuri Kolosov and Ms. Marta Santos Pais.

Moreover, the Committee has designated several of its members to follow the preparatory process for future international meetings. Mr. Swithun Mombeshora is to keep abreast of developments leading up to the Population Conference to be held in Cairo (Egypt) in 1994; Mrs. Flora Eufemio has been designated to follow developments relating to the Women's Conference in Beijing (China) in 1995 and Mrs. Akila Belembaogo has been appointed to follow the preparatory process of the Social Summit to be held in Copenhagen (Denmark) in 1995.

The outcome of the different working groups' discussions will be made known in the future. On the matter of urgent procedures, which is obviously of interest to those dealing with children's rights, it is possible to state for the moment that the Committee envisages the urgent procedure working within the function of the reporting process. In effect this means that the Committee has not decided that it can follow up on an individual case unless the case is indicative of a pattern of serious violations within a State party, especially as the Convention on the Rights of the Child did not envisage receiving individual complaints under the Convention.

Individual complaints concerning children's rights can of course be sent to the communications procedure under the Optional Protocol of the Covenant on Civil and Political Rights. At present, however, the extent of adherence to this Optional Protocol is quite limited. For example, of the countries represented here by NGO participants, only four have accepted the obligations under the Optional Protocol. They are Mongolia, Nepal, Philippines and the Republic of Korea.

## Conclusions

It is clear that greater efforts are required to ensure progress in the ratification of major human rights treaty instruments and their protocols. Progress on the ratification front would be in line with the contents of the programme of action agreed upon by participants to the World Conference on Human Rights, according to which one of the yardsticks for measuring progress in human rights by the year 1998 would be the extent to which universal ratification of international human rights instruments had been achieved.

It is to be hoped that in the case of the Convention on the Rights of the Child universal ratification can be accomplished by 1995. Undoubtedly this goal cannot be attained without the assistance of NGOs and professionals lobbying legislators and other decision-making groups.

For those States which are already parties to the major international human rights treaties, the challenge is one of implementation. Political willingness and the appropriation of sufficient resources are absolutely vital if gains are to be made in this area. The implementation of the rights contained in the Convention on the Rights of the Child requires the full participation of all players in the national and international community. The Committee on the Rights of the Child is dependent on the sharing of tasks between all partners, be they governmental, intergovernmental or non-governmental, if improvements are going to be realised in the situation of children. The Committee urgently needs reliable and comprehensive information on the national level in order to make the most appropriate suggestions for action to implement the rights of the child. The juridical value of the suggestions and recommendations for action as contained in the Committee's preliminary and concluding observations is yet to be determined. It may be suggested, however, that their potential for influencing change is great if they are utilised in a coordinated fashion and are perceived as a useful tool for advocating change by NGOs, professional groups, inter-governmental organizations, development agencies and others. As the 21st century approaches, it is to be hoped that these initiatives will have taken hold so that we can look forward to a future charged with renewed vigour in the promotion and protection of the rights of the child.

## UNICEF - An Overview

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### **The UNICEF, its main objective and methods of work**

The mandate of UNICEF has changed over the years. UNICEF started as a United Nations body and, as its name indicates, it used to be a fund. It was created by the General Assembly of the United Nations primarily to assist the recovery in Europe after World War II. The children of Europe then needed great assistance, and consequently the General Assembly decided that a fund should be created within the UN for these children.

UNICEF carried out many emergency tasks: supplies, milk distribution, etc. After Europe had achieved some degree of recovery, the question was whether UNICEF should continue to exist. The General Assembly decided to change the mandate, with a focus on development. Since then the world of UNICEF has been divided into two parts:

- the industrialised countries - which are donor or giving countries;
- the developing countries - which are beneficiaries or recipient countries.

UNICEF is now divided into six regions or blocks of "recipient" countries. These are as follows:

- the offices in the Americas and the Caribbean which we call TACRO;
- a regional office covering the Middle East and North Africa;

- a regional office for East and Southern Africa;
- a regional office for West and Central Africa;
- two offices in Asia: one for South Asia, and one for East Asia and the Pacific.

I will be speaking from my experience as a regional advisor in the East Asia and Pacific office. I will also cover some examples which show global trends. Apart from the six regional offices listed above, UNICEF also has country offices which, in effect, constitute its very backbone. Every office has a representative who, in effect, is an ambassador of UNICEF to that specific country. Budget and programmes are entirely under the control of the representative and the programme office in that country.

I will talk about Country-Programme planning in a little while, as I think it is an important point. I wish to point out that in every country where there is a UNICEF office, you as an NGO in that specific country must first establish contact with that office and link-up with the officer in charge of the sector in which you are interested. If, for example, you are working in the area of child health, that will be the programme officer in charge of child health. If you are working in education, then it will be the programme officer in charge of education. Many NGOs will probably be interested to know that there is a programme officer in charge of a wide range of issues under the label of Children in Especially Difficult Circumstances (CEDC).

CEDC includes issues such as street children, child workers, sexual exploitation of children, children suffering from AIDS (also included under health), and children who are victims of war. All of these come under the programme sector of CEDC. We will speak later a little more specifically about the Convention on the Rights of the Child as well as the guidelines for reporting on special protection. If you wish to submit projects or if you need assistance from UNICEF, you should contact the officer in charge of CEDC.

## **UNICEF compared to other UN bodies**

UNICEF has an Executive Board which meets once a year and sets the policy. The Executive Board is composed of representatives of countries that belong to, or are members of, the UNICEF family; some of them are official but some governments also nominate to the Executive Board private persons who are in business, for example, or members of NGOs.

At the beginning I said that the world of UNICEF was divided into two parts. I have just been telling you about country offices found in the beneficiary countries; the other half of UNICEF is composed of countries from the industrialised world. These are countries which under a certain set of criteria do not require UNICEF assistance; meaning that there are certain countries which, by virtue of a set of indicators, are able to raise resources to help their own children; but not only can they help their own children, they can also help other countries' children. These are the so-called donor countries. The donor countries do not have country offices, they have national UNICEF committees. The National Committees of UNICEF are probably what you would call NGOs because they are private organizations working for advocacy as well as fund-raising for UNICEF. They also do a great deal of advocacy for the children of their own countries and much campaigning on education in development.

### **The funding of UNICEF: A unique characteristic**

Compared to other UN organizations and agencies, UNICEF is decidedly the most viable in terms of funds. It is not rich, but it never runs out of money. The financial resources of UNICEF come entirely from voluntary contributions; not a single cent of UNICEF's funds comes from assessment. Governments are not assessed by UNICEF and consequently governments that contribute to UNICEF do so voluntarily.

UNICEF obtains pledges and promises from governments; the governments volunteer to give certain sums of money, and make good their contributions. The budget of UNICEF was \$ 900 million for



1993; 75% of this came from public funds (voluntary); 25% came from private funds, from NGOs through the efforts of the National Committees.

What is the staying power of UNICEF's funding source? The staying power, in my view, is the credibility of the organization and its accountability. Year after year UNICEF must account to the Executive Board, which examines how every cent is spent. The donor countries also ask for very strict accounting. This goes down the line; when UNICEF gives assistance to NGOs, national organizations and voluntary organizations, they all expect that kind of accountability because it is the reason for the continuous flow of sourcing in UNICEF. When we ask for partners and governments agree with UNICEF on the future counter-programme, there is a very strict accounting of how that budget is spent. When UNICEF gives technical assistance to NGOs there must be strict accounting. Accounting relates not only to the money, but also to the results, since accounting is not possible unless you can monitor the results. I'll come back to monitoring because it is very much to the point *vis-à-vis* the Convention on the Rights of the Child.

I wish to share with you some sobering facts on the situation of children globally; for if we are going to strategise and see how we can utilise the Convention on the Rights of the Child on the basis of children's present situation, how can we be certain that we know what the problems really are?

UNICEF published *The State of the World's Children Report* which is probably one of the most widely read books on the situation of children. This report states that: "more than 35,000 children under five die every day in the developing world..." Sixty percent of these deaths are caused by diseases which are preventable by available but unaffordable means, such as pneumonia, diarrhoea, measles and others preventable by vaccination. Vitamin A deficiency threatens 10 million children with death. Iodine deficiency lowers the mental and physical abilities of up to 1 billion people; this is the biggest cause of mental retardation, and the sad part is that iodine deficiency can be eliminated at a total cost of approximately \$ 100 million a year. Iodine deficiency can be treated with inexpensive medicines which are readily available.

This report tells us that \$ 100 million, which is what is needed to make sure that children under five globally will not suffer from iodine deficiency, is less than the cost of two modern fighter planes. How many fighter planes are acquired every single year by various countries?

UNICEF has set a figure, together with the World Bank, the WHO and the ILO: \$ 25 billion a year are needed to meet the basic needs of children globally. Is \$ 25 billion a year for our children affordable? The answer is yes.

Governments in developing countries devote approximately 10% of their annual budget to meeting human needs; the rest goes to military equipment and infrastructure. Figures for 1992 show that \$ 40 billion is the average of the bilateral and multilateral aid from industrialised countries. This means that \$ 4 billion, 10%, goes for nutrition, primary health care, sanitation, water, education and family planning. The figure of \$ 4 billion is less than half of what is spent on the purchase of sports shoes in industrialised countries every year. What these figures are telling us is where the priorities of countries, both rich and poor, lie. Through these figures we can see that the priorities are not children, women, or basic human needs.

UNICEF is now promoting a world-wide campaign: the '20/20 strategy'. It is a strategy of restructuring aid and budget. It means that we should persuade all governments that instead of spending 10% of their annual budget to meet basic needs, they should spend 20%.

UNICEF distinguishes two kinds of emergency in the world; these are the 'silent' emergencies and the 'loud' emergencies. The 'silent' emergencies are those which I have just been talking about: 35,000 deaths of children every day. Nobody talks about them, they do not reach the headlines. You can see these emergencies every day; all you have to do is to go out in the streets of Manila or Bangkok and you will see these 'silent' emergencies. The 'loud' emergencies are the plight of Somalian, Sudanese, Bosnian children, etc. These are headline-grabbing and require immediate responses.

## **UNICEF and the Convention on the Rights of the Child**

The Convention on the Rights of the Child is seen as a general framework and as a new mandate for UNICEF. It is long term and has no time limit. The Convention on the Rights of the Child is a treaty, a legal document which became international law in September 1990. Once it had become law, there was a meeting with over 70 heads of States and governments in New York City. The result of this historical meeting of leaders was a declaration committing their governments and stating the political will to achieve certain goals within a given time frame.

The Summit Declaration was accompanied by a Plan of Action. The Plan of Action has seven goals to be achieved by the end of the decade. These goals are monitored statistically; in other words, they are indicators and specific targets. They are, in a way, a tool for achieving the implementation of some of the rights in the Convention on the Rights of the Child. As I will show, this Declaration only covers a small part of the rights guaranteed under the Convention. What is good about these Summit goals is that there was a political commitment by the Summit participants to translate these global goals into National Plans of Action. But how will we know that these global goals will be achieved?

The question that should be directed to the Committee is: how and what indicators do they use to take into consideration achievements under the National Plan of Action? To what extent is that credited to the country?

I think there is much to be done to coordinate all of these different instruments so that a country's achievements or lack of achievements can be monitored.

### **What is a Country Programme?**

Each UNICEF country office enters into an agreement with the government, the agreement spells out a Country Programme, and the government will identify areas where it wants UNICEF to provide resources. UNICEF will either agree with that priority or will not.

Every country will have a variation of the Country Programme, depending upon how the government and UNICEF see the priorities in each country. Rationally speaking, a country's commitment to the Convention first comes under the Country Programme, then under the National Plan of Action and finally in its report to the Committee on the Rights of the Child.

Where do NGOs come in? They come in at any of the previously stated points, but it is the Country Programme which has the money; the country office is fully autonomous in determining the Country Programme and what projects should be undertaken, and if NGOs seek assistance for their projects they should approach the country office.

Once the UNICEF country office gets its budget, it is fully authorised to determine how to use that budget, and this is quite unique. In fact, the regional office elaborates no programme; it only provides technical assistance and advisory services, and supports the country office.

### **UNICEF advocacy of the Convention on the Rights of the Child**

UNICEF produced a training manual for the Convention on the Rights of the Child. It was destined for UNICEF staff but it is also useful for persons who plan to conduct a training programme. Its main aim is to equip UNICEF staff with basic knowledge on the Convention. It is intended to enable the staff of UNICEF to set up a framework for the Country Programming process and ensure that UNICEF will use a systematic approach when it works with governmental and non-governmental partners to promote and facilitate implementation of the Convention. The training package consists of a coordinator's guide and a participant's manual. It can be used at regional and country levels by UNICEF national committees as well as NGOs with a slight modification. It consists of a package for a five-day intensive programme which is divided into 12 sessions.

Session 1      An overview of the Convention and its relationship to the international human rights framework. Before the Convention on the Rights of the Child, UNICEF was talking about services for children rather than legal

rights. Now all UNICEF activities are within the framework of the Convention - a legal instrument with legal obligations.

- Session 2      The world of international agencies and treaty bodies.
- Session 3      The Convention and its relation to the Summit.
- Session 4      What does signature and ratification of the Convention mean?
- Session 5      The Convention as a framework for the Country Programme.
- Session 6      Building child rights into the situation analysis.
- Session 7      Informing the public about public rights.
- Session 8      Educating and involving children in their own rights.
- Session 9      Working with NGOs for child rights.
- Session 10     Working with parliamentarians and religious leaders for child rights.
- Session 11     Monitoring children's rights.
- Session 12     Supporting governments to report to the Committee on the Rights of the Child.

The training package explains the different categories of human rights and the characteristics of the Convention on the Rights of the Child. It outlines four different categories of rights contained therein: survival, protection, development and participation. It takes the treaty approach, working with international, national and local authorities. It is simple and UNICEF hopes to make it available in every regional office and country.

The Convention highlights the holistic approach; some articles have immediate application and others are more long term. The Convention is timeless. The articles are intended for children below 18 years of age. Who must comply? First, the States, because they signed; but every adult in society has an obligation. Teachers have obligations, communities have obligations, parents have obligations. The other aspect that is very controversial in our region is the

following: does a Convention which guarantees children's rights erode the authority of parents? Does it erode family relations? The answer is 'no' because the Convention states that the obligation of the State to support families is extremely strong. In fact, if there is a separation of children from their families, the State and the international community must try to unite the children and their parents.

Is UNICEF doing enough under the Convention on the Rights of the Child? Probably not, because it has a traditional focus and has comparative advantages in some areas. Take a look at the major goals for children in the 1990s under the Summit and compare them to the Convention on the Rights of the Child and you will notice the convergence. You will see that when it comes to health, nutrition, sanitation, environment and education there is a convergence. The Summit goals and the Convention have more or less the same coverage, which means that UNICEF is doing well in those areas. However, if we look at protection of the rights of children, we find that the Convention covers these, but the Summit goals and therefore UNICEF goals do not. In other words, UNICEF, by pushing the Summit goals, covers survival and development rights well. However, the participation and protection rights of children are sometimes not well covered by the programmes that now exist in UNICEF.

It is essential to discuss the elaboration of a strategy that would give protection rights greater priority in your countries.

### **The Convention in relation to the Summit**

The Convention was the driving force behind the convening of the Summit but the Summit strengthened the Convention and its implementation. The two are symbiotic. The goals under the Summit are very specific; they are time-bound and take into account what is feasible in the current decade. The Committee on the Rights of the Child will be taking into consideration the achievement of country goals in relation to country reports.

In contrast to the Summit declaration and goals the Convention is universal, with universal standards and norms. It is a legal document creating legal obligations and is not time-bound.

## **The role of UNICEF in the Convention**

UNICEF provides support but feels that it cannot be responsible for the implementation of the entire Convention. UNICEF gives support where children's needs are greatest, where rights are in great jeopardy, and where UNICEF has comparative advantages. All UNICEF activities should reflect the principles and provisions of the Convention. UNICEF staff must take into consideration the Convention as they elaborate Country Programmes. To advance the implementation of the Convention, UNICEF facilitates the review of legislation and social development policy, so that these will harmonise with the Convention. These are all specific strategies followed by Country Programme offices. They help by examining the allocation of resources in national budgets. The UNICEF country office supports activities to inform and educate the public and key partners. It also works with the media and initiates studies on disadvantaged or under-represented groups and supports and works with allies.

The situation analysis which describes the situation of children and problems in a country is a good reference for the Committee on the Rights of the Child when it is examining a country report.

Article 42 of the Convention, tells us how the Convention is to be implemented and how "child rights" have entered into the UNICEF vocabulary. Previously the term was "child services."

## **Can we educate children about children's rights? Strategies for implementation**

The UNICEF training package says that three basic principles must be followed:

- anything you do must be understood by the children;
- children must be able to respond to it (do that by linking it to their personal experiences);
- we must make sure that they participate and get involved in rights issues, dialogues and discussions.

Promotion of children's participation rights is something that does not get enough attention. It is hoped that UNESCO will become one of our major partners in getting children to know a little more about their rights; we must get them to participate in determining their own best interests. Information through education, whether formal or informal, should be appropriate to the age, understood by children, culturally appropriate and free from stereotypes and any kind of bias.

An effort should be made to reach CEDC. The education rights provision should not only apply to the mainstream. I believe that access to education is very important because there are children in rural areas of Vietnam, Laos and Thailand, as well as the indigenous populations and hill tribes, who do not have access to education.

As the Convention states in its articles on participation, children have the right to express views; they are entitled to freedom of expression, thought, conscience and religion. All of those rights are participation as well as protection rights. We will have to depend on NGOs to take the lead role in promoting those rights.

### **Monitoring compliance with the Convention: governmental, sub-national and non-governmental monitors**

Monitoring functions include responses to complaints about violations, as well as influencing legislation and policy, research and collection of data, reviews and "watchdog" activities.

It is important for the trainees to know what happens after ratification. A report is presented which includes factors and difficulties in implementation; it must have a comprehensive view, need not repeat basic information but must have further information and be made available to the public.

The formal steps are as follows: correspondence should be sent by the Centre for Human Rights in Geneva to different countries. The Centre then sends a *note-verbale* with the guidelines for reports and due dates; once that is done, reports are sent to the Centre to be translated and distributed. However, there are some risks. The information sent from the Centre to the Foreign Ministry may get



'stuck' and never reach the country. States Parties may not send reports directly to the Centre for Human Rights. Some island countries in the Pacific region, for example, ratified the Convention and kept the instrument of ratification, not sending it for submission to the Centre for Human Rights in Geneva or to New York through their UN representatives. They were surprised to see that they were not on the list of ratifying States.

A successful report preparation requires political commitment and a competent coordinator and team. Human and financial resources should be made available and adequate time should be allowed.

I would like to conclude by giving you an example of a regional activity: "the Beijing consensus." It resulted from a meeting sponsored by UNICEF on the Convention on the Rights of the Child; when the ministers met in Beijing they agreed that training was the priority. After this regional consultation, the governments themselves accentuated the fact that they needed a network for children's rights information in the region. This shows that some governments were quite sincere; they wanted to do something, but they needed a follow-up and asked UNICEF for help in establishing such a network. Child Rights ASIANET was created as a result. It is located in Bangkok and functions as a regional network.

UNICEF conducted consultations with governments in the region of East Asia and the Pacific and sponsored one informal meeting of the Committee on the Rights of the Child, in Bangkok in May of 1993.

UNICEF provides country assistance. I have, for instance, travelled to Mongolia, Cambodia, Indonesia and China in order to assist these countries in preparing their reports, not in substance but in understanding the procedure and reviewing national legislation in order to harmonise it with the Convention, looking at the national Plans of Action, training activities, sharing experience, etc. With the regional office focusing on country assistance we hope to be able to strengthen that network.

The regional office promotes regional cooperation. I will give you an example of a regional initiative through governments: the

South Asia Association for Regional Cooperation (SAARC) has elaborated a full declaration on children's rights and on what South Asian countries will do to promote children's rights. As a result, at their last meeting they established a Programme of Action with a focus on the girl child. It is possible to mobilise regional associations so that they state their commitment to regional cooperation. We were able to lobby the Asian countries so that at the Summit last year they finally agreed to include a statement on children and promoting children's development in Asian countries. It was only a statement but it was a good beginning.

## **The Role of UNICEF in the Implementation of the Convention on the Rights of the Child in Pakistan**

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### **UNICEF as the most favoured partner for CRC**

UNICEF has been empowered with the most favoured partner status in the United Nations family for both the propagation and implementation of the Convention on the Rights of the Child (CRC), the most holistic charter for children. It is a privilege to represent such an organization but it is one which carries with it multi-dimensional responsibilities. Laws, be they local, national or international, are of little value until and unless they are understood, applied and institutionalised. UNICEF's role in actively promoting the CRC is precisely to commit the family, community and the State to human norms which promote and protect the "best interests of the child."

The realisation of the rights of the child is the mandate reflected in UNICEF's sectoral layout, be it health and nutrition, education, women in development, water and environmental sanitation, children in especially difficult circumstances or the urban unreached. Increasingly, UNICEF is focusing on a strategy which aims at the convergence of sectors in order to maximise the synergism between the goals agreed upon at the World Summit for Children (WSC) in 1990. The latter set out indicators for the survival, protection and development of children as outlined in the Convention.

## UNICEF's role in promoting the CRC in Pakistan

UNICEF's role in assisting the Government of Pakistan in the implementation of the Convention is indeed a challenge in a country where 45% of its 120 million population comprises children under the age of 15 and where the literacy rate is 35% at the maximum. The primary school completion rate hovers around 50%, with a gender bias overwhelmingly in favour of boys. In a country where "*apartheid* of gender" is psychologically, socially, legally and economically institutionalised at every stage UNICEF's job is by no means an easy one. The word "assistance" to the Government of Pakistan is not being used to denote a "project," "funding" or "sponsorship" in a narrow sense but refers to a process of instituting mechanisms which can in fact put children first as the most precious and visible asset of a society.

The strategy for putting this process into action is outlined in the current Master Plan of Operations (MPO), 1992-1996, a document signed between UNICEF and the Government of Pakistan. The MPO quite unequivocally states as its first area of collaboration: "[T]o place children's concerns high on the political and development agenda in implementation of the World Declaration and Plan of Action for Children and the Convention on the Rights of the Child."

In addressing the issues of Children in Especially Difficult Circumstances (CEDC), the MPO strategy calls for advocacy of the Convention, awareness of the problems, research and documentation, mainstreaming of the handicapped, access to education through non-formal means, protection of child labour and the eventual elimination of child labour from selected hazardous industries.

The preamble to the Convention outlines the major partners needed for the survival, protection and development of children, ranging from the immediate family and community/society to the State and international mechanisms. The goals are:

- to respect the participation rights of children;
- to protect vulnerable groups of children;
- to facilitate equal and effective access to educational and vocational opportunities;

- to fulfill the “minimum core” needs of children who are caught in emergencies.

Pakistan ratified the CRC the first year after its adoption in 1990 but with the following reservation: “[T]he provisions of the Convention shall be interpreted in the light of the principles of Islamic law and values.”

The criticism of this reservation by the International Commission of Jurists (ICJ) is very thought-provoking and one which UNICEF needs to address along with its implementing partners in Pakistan, so that such a sweeping reservation will not totally undermine the very spirit of the Convention.

This is critical in the light of the country’s prolonged and agonising political crises and the ever-elusive democratic path. Following the ratification of the Convention, the National Conference for Children was convened by the Special Education and Social Welfare Department and UNICEF, and culminated in the Islamabad Declaration. These deliberations were attended by a gathering of parliamentarians, jurists, politicians, mass media experts, religious scholars, writers, artists, intellectuals, professionals and policy makers/planners and NGOs.

Shortly after the Islamabad Declaration, the Government of Pakistan in conjunction with UNICEF conceptualised the agenda for children in the National Programme of Action (NPA) representing “the longer term perspective for a planned response to the unmet basic human needs of children.” The NPA was conceived in the context of the Social Action Programme and Eighth Five-Year Plan 1993-1998, incorporating in letter and indicative budgets Pakistan’s endorsement of the Convention, and the WSC and the Education For All (EFA) goals. The NPA states specifically that:

“Pakistan will pursue the norms of justice and equity which the Convention propagates as values integral to human development and to the protection of vulnerable groups like children. National laws will be reviewed and reformed to accord with the Convention and used as a source of regulatory and educational support to adults as well as children ... Pakistan is committed to achieving

the rights of the child in the development perspective of the whole child and of all children..."

## **The implementation mechanisms**

### **Federal level**

The National Commission on Child Welfare and Development (NCCWD) was designated as the focal point, affiliated with the Ministry of Special Education and Social Welfare, for monitoring and reporting on the implementation of the CRC. In addition there are other departments/ministries of education, health, labour, social welfare, law, interior, and religious and minority affairs which also have a role to play in the protection and promotion of children's rights. As we shall see below, some of these are now becoming involved because of pressures from both inside and outside the country.

### **Provincial level**

The NCCWD has provincial outposts located within the Department of Social Welfare. Similarly-related departments cited above, together with the police/prison departments, are also earmarked for collaboration as partners if implementation of the Convention becomes a priority for the Government of Pakistan.

### **Role of NGOs**

Both MPO and NCCWD publications give a prominent role to NGOs in the promotion/implementation of the Convention.

Human rights activists and NGOs have encompassed the spirit of the Convention in their human development work. These motivated groups are engaged in three types of activities: awareness creation; rescue operation for children in difficult circumstances; legislative changes to align the country's laws with the Convention.

## **Compatibility of national laws with the Convention**

UNICEF has assisted the NCCWD in the compilation and annotation of Pakistani laws relating to children. This will facilitate the enactment of the necessary legislation concerned with children. The parliament has already passed the Employment of Children Act 1991 as well as the Abolition of the Bonded System Act 1992 to prohibit the employment of children in certain occupations and under unacceptable circumstances. Furthermore, the Pakistani Law Commission is undertaking a review and revision of national legislation in order to make the necessary changes in the following laws:

- Employment of Children (Amended) Act, 1993 (Proposed);
- Factories Act 1934;
- W.P. Shops & Establishments Ordinance 1969;
- Mines Act 1923;
- Child Marriage Restraint Act, 1993.

## **The first report on compliance**

The first report on compliance was submitted in December 1992. In addition to the enumerated activities pertaining to compliance with the Convention, a suggestion is under consideration in the Ministry of Labour to have a National Committee on the Rights of the Child to monitor and implement the relevant child labour laws. The NCCWD outlined the difficulties and constraints which were encountered in the first two years following the ratification of the Convention. These are:

- insufficient linkages and coordination between the concerned federal and provincial agencies and the NCCWD;
- inadequate awareness among the general population about the rights of the child, as enunciated in the Convention;
- ineffective endorsement of existing legislation and absence of legal coverage in certain areas;

- resource constraints;
- rapid population growth;
- insufficient base-line information;
- slow growth of institutions for child welfare, guidance and protection services (First Report on the Implementation of the CRC, December 1992).

Although this is an honest set of statements, it must be mentioned that the Convention is still regarded by the Government of Pakistan as a welfare instrument rather than a developmental one for the participation, care and protection of children. Furthermore, the child is considered as the passive recipient of rights bestowed by adults as they deem fit to interpret "the best interests of the child." The ambiguity and snags in perhaps the most powerful of international legal instruments needs an intelligent response from the designers of the Convention when juxtaposed with a predominantly illiterate people caught in dilemmas of State and society.

It may be asked at this point whether the NCCWD, the representative Government of Pakistan agency, can achieve the necessary degree of implementation in its current mode of operation. Implementing mechanisms/focal points at the provincial level are lodged as an add-on to the Social Welfare Departments, which are themselves caught in the "static" trap of welfarism through bureaucratic channels. The current "official" interpretation of the Convention somehow misses the underlying spirit which must interact with the "best interests of the child," always in the process of growing, becoming and developing.

On the issue of resource constraints, Himes in his paper *"Implementing the United Nations' CRC: Resource Mobilisation"* (Innocenti, 1992) draws attention to an imaginative matrix of opportunities for resource mobilisation at different levels of society, e.g. household, community/district, provincial/State, national and international. Resources can be in the form of human, economic or organizational support. It is up to States Parties to develop their own eclectic mix or package of resource mobilisation without over-burdening the family level (Himes, 1992).



UNICEF too has a responsibility towards active advocacy and social mobilisation for the implementation of the Convention which needs to be stepped up. Perhaps at this juncture UNICEF in Pakistan must refresh its own perspective *vis-à-vis* the child. The entire context of conceptualising CEDC is a holistic and child-centred one. The child is buffered and connected at four levels:

- family;
- community;
- government;
- environment.

But is vulnerable to:

- abuse;
- exploitation;
- armed conflict;
- natural disasters.

At the family level some suggested interventions are geared to encouraging family stability, such as:

- family life education (parents'/children's awareness of CRC);
- promotion of the role of the father in family and child rearing;
- promotion of community-based family counselling;
- women's development which does not harm the family (the efficiency syndrome);
- home-based cottage industries with a healthy approach to child work (as opposed to child labour).

## **Community level**

At the community level, programmes/services can be instituted which:

- encourage mother/child health;
- provide preschools/home schools;
- expand basic education;
- provide facilities for expression, recreation and identity development of the child.

## **Government level**

UNICEF is charged with the responsibility of:

- promoting the adoption/ratification and implementation of the Convention;
- using the Convention to focus public/government attention on child abuse and exploitation;
- raising public awareness of child rights.

These efforts will not only give the child rights, but will also assist in creating the appropriate environment at all levels to begin sustainable empowerment processes.

## **Issues and problems**

What is private and what is public? The convenience of diffused social arrangements creates hurdles in implementing the Convention and other national laws. In fact, the latter have not addressed the issues of domestic servants and children employed in private sheds or home-based production units. This public-private dichotomy is further reinforced in the context of Pakistan by the conceptualisation of the cultural construction of the self. "In the South-Asian context the self is defined through society and identity has more to do with a collectivity than an individual. It is for this reason that concepts of individual rights and the consciousness to demand and fight for them

has not yet been politicised to the degree where it has made significant impact upon legislative and other policy processes" (Ali & Khattak, 1993). Sensitivity to this attitude hence has to be incorporated into the framework of UNICEF's efforts to implement the Convention at the level of the individual, the family and the community.

As pointed out in earlier presentations, the recurrent features in Pakistan for CEDC are the marginalisation of these children at risk and their invisibility in the growing informal sector. This is so "even though their labour/productivity and deprivation are very visible. The value added to the production process on account of their labour can easily be evaluated in monetary terms to enable the statisticians to count them, policy-makers to incorporate them in the planning process and legislators/judiciary to make and enforce laws in compliance with human rights norms and the Convention" (Jamil, 1993).

In Asia not only has a regional human rights system failed to develop but the region also lags behind in ratification of the major international covenants on human rights. Why have regional human rights norms failed to develop? Are human rights concerns of Asians different from those of the Convention? Or is it simply that the Western universality notion of human rights is alien and incapable of assimilation into the cultural traditions? Why has Pakistan chosen a specific reservation arguing for Islamic values? Is it simply an unexamined generalised statement or are there specific areas which seem to be in conflict with the Convention? (Ali & Jamil 1993, to be published). It is important to demarcate areas of compatibility, conflict and negotiation so that the "best interests of the child" can become an acceptable norm to all concerned.

In 1991, the UNICEF Executive Board laid out the framework for assisting countries with their implementation of the CRC. This comprised the following activities:

- gathering gender/area specific data on children;
- reviewing legislation pertaining to children;
- undertaking studies on Convention-related issues;

- providing training on the CRC for a better understanding of its provisions and helping with its promotion and adoption by government and non-governmental organizations;
- informing and educating children and youth about their rights.

UNICEF in Pakistan has been actively and extensively involved with almost all activities in Pakistan and with all available partners, but the efforts are clearly insufficient; much remains to be done. Activities which transform token action into true participation (Hart, 1992) for children in defending and demanding their rights need to be focused upon in the form of a grass-roots, bottom-up approach, since the trickle-down effect is clearly eluding government organizations, NGOs and even international agencies. Perhaps a systematic reorientation incorporating the human rights empowerment framework is the need of the hour. The Human Rights Empowerment Framework, which is pegged to welfare, access, awareness, control and participation, is a suggested strategy for children at risk. The enabling environment has to be created by partners collaborating for children's rights.

### **Recent developments - an opportunity for the Convention**

Since the first report to the Committee in 1992, the momentum for human rights for children has begun to gather speed as a result of data gathering, legislation studies, seminars, NGO efforts, media exposure and the efforts of national and international lobbies to curb child abuse. The awareness of child abuse in the form of carpet production - 80% of the carpet production is the work of children - brick making, bonded labour, domestic servitude, sexual abuse, kidnapping and use as camel jockeys has reached the public and policy-making levels. Some positive outcomes are:

- Senator Harkin's bill, to be made law this autumn, entitled "The US Child Labour Deterrence Act of 1993", which is creating a serious stir in the Department of Labour, the Carpet Owners' Association in Pakistan and the Ministry of Finance;

- the Declaration by the UAE Camel Racing Association, denouncing the practice of "camel kids" and establishing severe penalties;
- the formation of a Senate Committee on Human Rights as recently as 10 August 1993;
- the Senate's public statements regarding abolishing child labour and bonded labour just a fortnight ago;
- the Department of Workers' Education (DWE), under the Ministry of Labour, agreeing with the Friedrich Ebert Stiftung (FES) to organize a workshop, with UNICEF assistance, on child labour in November 1993;
- the organization of an Asian regional seminar in Islamabad, "Children in Bondage - A call for Action," in November 1992, on the initiative of the ILO and the United Nations Centre for Human Rights, in collaboration with the Ministry of Labour, Manpower and Overseas Pakistanis;
- organizations such as the BLLF, the AGHS, the Paediatric Association NWFP, Dast-e-Shafqat, the NCCWD, the Social Welfare Department of Baluchistan, Lawyers for Human Rights and Legal Aid addressing child trafficking, liberating bonded child labour and recognising the child's right to education, health and recreation at field level.

However these are pyrrhic victories and as yet fragmented initiatives. The process has begun and the momentum must not be lost, but UNICEF needs to do far more, with a renewed commitment to its mandate as the most favoured partner. Four abused children are four too many; the physical and psychological emergencies of the estimated 8 to 10 million working children of Pakistan (NPA estimates) are not silent but loud emergencies, requiring immediate action. In the words of Mr. Grant, let us remind ourselves and the signatories to the MPO and the CRC that "where rights and needs of children are concerned, universality is not negotiable and conditionality is unacceptable."

## **The ILO and Children's Rights Some Background Information**

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To set in context the policies of the International Labour Office (ILO) concerning child labour and its activities in this field a brief description of the ILO and its mandate is useful.

The ILO was established in 1919 and is unique in the United Nations system for its tripartite structure, whereby workers' and employers' representatives have an equal voice with those of governments in formulating its policies. Its guiding principles are as set out in the Declaration of Philadelphia adopted in 1944:

- labour is not a commodity;
- freedom of expression and of association are essential to sustained progress;
- poverty anywhere constitutes a danger to prosperity everywhere;
- all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.

The ILO has many different methods of action aimed at furthering the realisation of these principles. These include:

- the formulation of international policies and programmes to help improve working and living conditions, enhance employment opportunities and promote basic human rights;
- the creation of international labour standards to serve as

guidelines for national authorities in putting these policies into action;

- an extensive programme of international technical cooperation to help governments in making these policies effective in practice;
- training, education, research and publishing activities to help advance all these efforts.

### **International labour standards**

One of the ILO's oldest and most important functions is the adoption, by the tripartite (governments-employers-workers) International Labour Conference, of Conventions and Recommendations which set international labour standards. Through ratifications by Member States, conventions are intended to create binding obligations to put their provisions into effect. Recommendations provide guidance on policy, legislation and practice.

Between 1919 and 1993, 174 Conventions and 181 Recommendations were adopted. They cover many matters, including certain basic human rights (such as freedom of association, the abolition of forced labour and the elimination of discrimination in employment), labour administration, industrial relations, employment policy, working conditions, social security, occupational safety and health, employment of women, employment of children and employment of special categories such as migrant workers and seafarers. As can be seen from this list, the ILO's mandate is very broad. While child labour occupies a very important place in this mandate, as will be discussed below, it is only one component.

### **The ILO and child labour**

The fundamental objective of the ILO policy on child labour is the abolition of child labour. The ILO set this as its goal in the very year of its creation, by adopting Convention No. 5, prohibiting work by children less than 14 years of age in industrial undertakings.

Sectoral Conventions and Recommendations on the minimum age for employment which were adopted after 1919 (employment at sea, agriculture, trimmers and stokers, non-industrial employment, industry, fishing and underground work) also adopted this perspective, as did the most recent ILO instrument on this subject, the Minimum Age Convention (No. 18) and Recommendation (No. 146), 1973. The International Labour Conference, in the preamble to Convention No. 138, considered that "the time has come to establish a general instrument on the subject, which would gradually replace the existing ones applicable to limited economic sectors, with a view to achieving the total abolition of child labour."

The emphasis placed by international labour standards on the abolition of child labour attests to the conviction of the ILO's constituents that childhood is a period of life which should be consecrated not to work but to education and development; that child labour by its nature or because of the conditions in which it is undertaken, often jeopardises children's possibilities of becoming productive adults, able to take their place in the community and, finally, that child labour is not inevitable and that progress towards its reduction and even its elimination are possible when the political will to fight it exists.

### **The Minimum Age Convention**

ILO Convention No. 138 has been ratified by 45 countries, including many developing countries. These do not, however, include any of the Asian countries which are represented on this training programme. Nonetheless, because of the fundamental importance of Convention No. 138 and Recommendation No. 146 as the basis for ILO policy aimed at the protection of working children and the gradual elimination of child labour, it is worth spelling out what, in the light of the provisions of those instruments, are the major elements that should inspire national policy and legislation.

First and foremost is a strong commitment to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental



development of young persons. The elements of such a policy may vary from country to country but should in general include:

- firm national commitment to full employment and measures designed to promote employment-oriented development in rural and urban areas;
- the progressive extension of other economic and social measures to alleviate poverty wherever it exists and to ensure family living standards and income which are such as to make it unnecessary to have recourse to the economic activity of children;
- the development and progressive extension of social security and family welfare measures aimed at ensuring child maintenance;
- the development and progressive extension of adequate facilities for education and vocational orientation and training appropriate in form and content to the needs of the children and young persons concerned;
- the development and progressive extension of appropriate facilities for the protection and welfare of children and young persons, including employed young persons.

Secondly, national laws or regulations should specify a minimum age for admission to employment or work. This minimum age should not be less than the age of completion of compulsory schooling and, in any case, according to the Convention, should not be less than 15 years. However, countries whose economy and educational facilities are insufficiently developed may initially specify a minimum age of 14 years.

The minimum age set for employment or work must also be linked to the nature of the work. Thus, it is necessary to specify the ages of admission to heavy and light work. The Convention fixes at 18 the minimum age for admission to employment or work which is likely to jeopardise the health, safety or morals of young persons. However, this may be lowered to 16 on condition that the health, safety and morals of the young persons concerned are fully protected

and that they have received adequate, specific instruction and training in the relevant branch of activity.

However, national laws or regulations may permit the admission to employment or work of persons 13 to 15 years of age (or 12 to 14 if the basic minimum age is 14) for light work which is not likely to be harmful to their health or development and will not prejudice their attendance at school or their participation in vocational training programmes.

A third element that needs to be given special attention in legislation and indeed as a focus for national action relates to coverage. Although every effort must be made to provide protection in as many sectors as possible, the existence of serious constraints and hence the need for flexibility in coverage must be recognised. For these reason, it may well be, and often is, necessary for national laws and regulations to exclude certain categories of employment or work where there could be special and substantial problems of application. Moreover, where the economy and administrative facilities are insufficiently developed, the scope of application of national laws and regulations may be initially limited to certain branches of economic activity or types of undertakings. Which activities or sectors should be included depends once again on the country's situation, but national laws should cover, as a minimum, mining and quarrying, manufacturing, construction, electricity, gas and water, sanitary services, transport, storage and communication, and plantation and other agricultural undertakings mainly producing for commercial purposes. The Convention also provides for the possible exemption, under certain conditions, of work done in educational establishments for vocational training or work in undertakings if it is part of a training, guidance or orientation course.

A fourth important area for national policy is conditions of work. Given the fact that the total abolition of child labour is unattainable in the short run in many developing countries and that therefore millions of children will continue to work, the conditions under which they work should be a focus of policy. Special efforts should be made to ensure that children are not employed under conditions involving use of dangerous substances, agents or processes, the lifting of heavy weights, and underground work.

Special attention should also be paid to the provision of fair remuneration and its protection, the strict limitation of daily and weekly hours of work and the prohibition of overtime, the granting of a minimum consecutive period of 12 hours night rest and of customary weekly rest days, the granting of an annual holiday with pay of at least four weeks and, in any case, not shorter than that granted to adults, coverage by social security schemes, including employment injury, medical care and sickness benefits schemes, and the maintenance of satisfactory standards of safety and health.

Finally, an area that deserves to be conceived of as an integral part of national efforts is that of enforcement. Laws and regulations, if they are to be effective, must be backed by effective enforcement machinery. This, therefore, calls for the strengthening of labour inspection and related services, for instance by the special training of inspectors, so as to detect and correct abuses in the employment or work of children and young persons, especially in respect of employment in hazardous types of work. In order to facilitate the verification of ages, it is necessary that:

- (a) the public authorities maintain an effective system of birth registration;
- (b) employers be required to maintain registers and documents indicating the names and ages of all employed children and young persons and of all those receiving training;
- (c) children and young persons working in the streets, outside stalls, public places, etc., be licensed.

These are some of the elements that are at the heart of the international labour standards on minimum age of admission to employment and should serve as guidelines in the setting of national standards.

### **What is the relevance of these international labour standards?**

ILO standards (i.e. Conventions and Recommendations) have a moral (political) and practical value. It is fair to say that ILO standards have exerted considerable influence on the laws and regulations of member States. Many texts have been modelled on the

relevant provision of ILO instruments; drafts of new legislation or amendments are often prepared with ILO standards in mind; trade unions use ILO standards to support arguments in bargaining and in promoting legislation; governments frequently consult the ILO, both formally and informally, about the compatibility of proposed texts with international labour standards.

The ILO's influence is, however, more than that. It also exercises a supervisory role. The Office has the constitutional mandate to prepare detailed reports on the application of international standards and summarise national law and practice on specific subjects. Although the process can be slow, its observations often lead to changes in laws and regulations.

The extent to which national laws and regulations themselves are applied in practice is a more difficult question. The ILO's supervisory machinery does inquire as far as possible into practice as well as law. Governments must supply information on the practical implementation of ratified Conventions. Moreover, national employers' and workers' organizations have the right to participate in the supervisory process by receiving copies of reports sent to the ILO and submitting comments on the application of ratified Conventions. The comments often relate to the way in which the Conventions are applied in practice. On several occasions, pursuant to complaints or Conference resolutions and with the agreement of the government concerned, the ILO has sent special missions to various countries.

Clearly, the country's economic and social conditions, the government's material capacity for enforcement, the value that government places on national laws and regulations, and the vigilance of employers' and workers' organizations determine how those laws and regulations are applied. Even so, this qualification does not diminish the importance of ILO standards; they are a strong normative force; they have been widely reflected in national laws and regulations; also their implementation, at least at the statutory level, is effectively supervised by ILO machinery.

## Technical cooperation activities

In the field of child labour, as in the International Labour Organization's other fields of action, the role of technical cooperation is to bring national law and practice closer to the model set out in international labour standards, so as to promote their application or their eventual ratification.

ILO technical cooperation therefore aims primarily at promoting and supporting action in ILO Member States which contributes to the effective abolition of child labour. Protection of working children, especially in terms of improving their conditions of work, can constitute another objective of technical cooperation. Nonetheless, this second objective is of a transitional nature, in the sense that it is pursued in anticipation of a comprehensive application of the prohibition of child labour.

Given that the complete abolition of child labour will take a long time, in view of the deep-seated causes of such work, the role of ILO technical cooperation is to ensure that a real start is made towards abolition and, in particular, that the intolerable is no longer tolerated. To this end, it focuses especially on encouraging and supporting action aimed at eliminating child labour in the types of employment (forced labour or bonded labour, for example), industries (mines and glassworks, for instance) and occupations (such as prostitution or sugar-cane cutting) which are clearly dangerous, i.e. detrimental to the safety, health or morals of the children concerned. Such elimination should be sought even if child labour in these dangerous types of employment, industries or occupations is not formally prohibited by legislation. This is often the case, for example, in relation to types of home work which involve exposure to toxic substances, to the use of pesticides or insecticides in agriculture, and to the recycling of household waste in public garbage dumpsites. Another priority is the reduction of the incidence of child labour amongst the youngest and therefore most vulnerable children (those less than 12 years old, the age at which primary schooling generally ceases).

As for the protection of working children, it is necessary to bear in mind that the principal objective of ILO action is to abolish child

labour for those children who have not yet reached a specified age or who are doing work which is liable to endanger their health, safety or morals. The ILO can assist governments to develop, implement and evaluate activities aimed at improving the lot of child workers with this aim strictly in mind, to the extent that they are framed within an overall goal of abolishing child labour. The principal criterion for evaluating these measures would be the extent to which they have enabled progress, even if only in a particular sector of activity or region, towards the abolition of child labour, by reducing its extent or by mitigating its consequences for children's further development.

ILO technical cooperation is mainly addressed to the ILO's natural partners (governments and employers' and workers' organizations) and aims to involve them more in the struggle against child labour. It also supports the NGOs which are active in this field.

The primary aim of ILO technical cooperation is to help governments to define and implement a national policy for the effective abolition of child labour (to use the terminology of Article 1 of Convention No. 138). This policy, the content of which should be determined in close consultation with employers' and workers' organizations and with other interested groups, should include or be linked with three main types of measures:

- measures aiming to put a stop urgently to the intolerable (the use of children in dangerous types of employment, industry or occupation as well as the use of very young and therefore particularly vulnerable children;
- measures aimed at changing attitudes and behaviour relating to child labour;
- measures which, without explicitly addressing child labour, attack its causes.

These measures include:

- knowledge of the problem; little is known about the extent and distribution (by branch of activity or type of occupation) of child workers, about the conditions in which these children work and about the effects of this work on their physical, intellectual, moral or social development. Because

of this ignorance, most existing programmes of action have principally benefited the most visible or "appealing" child workers (such as street children), and have helped very little those children who work out of the public eye (in domestic service, agriculture or small workshops, as traders in the urban informal sector, or in home work). It is particularly urgent to identify the most dangerous forms of child labour. Likewise, a critical evaluation should be undertaken urgently at the national level to combat child labour, so as to identify gaps and promising lines of intervention;

- mobilisation of public opinion around the issue of child labour, especially by supporting pressure groups (human rights or children's rights committees, for example) in their efforts to keep a systematic tally of abuses, to make them public and to highlight the breaches of their responsibilities by the public authorities;
- information and sensitisation of the general public, and in particular the actors in the struggle against child labour (governments, employers' and workers' circles, NGOs and other pressure groups), using the data gathered under (a) above and making wide use of the media (press, radio and TV);
- education of children and of those responsible for them (parents and teachers) on children's rights as workers, on the long-term costs of child labour and the possible alternatives;
- training of the people involved in the struggle against child labour (government ministry staff, labour inspectors, trade unionists, representatives of employers' organizations, NGO leaders, etc.);
- review of protective legislation and better supervision of its application; the substantial disappearance of child labour in the organized sector of the economy is mainly due to the existence of legislation prohibiting it. In many Third World countries there are gaps in legislation on child labour. Its scope does not include certain activities, occupations or enterprises (agriculture, home work, domestic service, small

enterprises) in which child labour is very widespread and often performed in dangerous conditions. Further, where work by children has not been outlawed, their conditions of employment are often unregulated. These deficiencies should be corrected. Likewise, labour inspection has frequently not fully lived up to its responsibilities as regards supervision of protective legislation. Measures are needed to reinforce its effectiveness;

- implementation of programmes of action aimed at preventing child labour, at withdrawing children from dangerous working situations, at facilitating their access to education, apprenticeship and vocational training services, or at improving their conditions of work and life; evaluation of the results of these programmes; their adaptation in the light of this evaluation, and their application on a larger scale;
- creation of an institutional mechanism within government, with responsibility for setting the main policy priorities, for coordinating the activities of the various Ministries and State institutions, for ensuring that the measures taken by the public sector and those of the private sector complement each other, and for giving financial and technical support to the programmes of direct action referred to above.

The measures which attack the causes of child labour, without explicitly addressing it, include those which aim to foster economic growth, to ensure a more equitable distribution of national wealth and to enhance the performance of the education and training systems. Such measures contribute to an improvement in the economic situation of the poorest classes of the population and thus to a reduction in the economic necessity for needy families to make their children work. The ILO can contribute to their success by offering technical cooperation in the fields of employment and incomes, manpower training and social protection. This includes activities aimed at mitigating the negative social repercussions of structural adjustment policies, at promoting more balanced development between town and country (access of peasants to land, credit, improved seeds and better production techniques, as well as provision



of drinkable water and education and health services in rural areas), or at enhancing the productivity of the urban informal sector and the conditions of work and life of its workers.

## Relevant ILO Conventions

Convention No. 5	Minimum Age (Industry), 1919
Convention No. 6	Night Work of Young Persons (Industry), 1919
Convention No. 7	Minimum Age (Sea), 1920
Convention No. 10	Minimum Age (Agriculture), 1921
Convention No. 15	Minimum Age (Trimmers and Stokers), 1921
Convention No. 33	Minimum Age (Non-Industrial Employment), 1932
Convention No. 58	Minimum Age (Sea) (Revised), 1936
Convention No. 59	Minimum Age (Industry) (Revised), 1937
Convention No. 60	Minimum Age (Non-Industrial Employment) (Revised), 1937
Convention No. 79	Night Work of Young Persons (Non-Industrial Occupations), 1946
Convention No. 90	Night Work of Young Persons (Industry) (Revised), 1948
Convention No. 112	Minimum Age (Fishermen), 1959
Convention No. 115	Radiation Protection, 1960
Convention No. 123	Minimum Age (Underground Work), 1965
Convention No. 138	Minimum Age, 1973

# Ratification of ILO Conventions Concerned with Child Labour

(August 1993)

COUNTRY	CONVENTIONS
Bangladesh	Nos. 6, 15, 59, 90
Bhutan	(non-member of the ILO)
Cambodia	No. 6
China	Nos. 7, 15, 59
India	Nos. 5, 6, 15, 90, 115, 123
Indonesia	—
Japan	Nos. 5, 7, 10, 15, 58, 115
Republic of Korea	—
Malaysia	Nos. 7 (Sarawak), 15 (Sabah and Sarawak), 123
Mongolia	Nos. 59, 123
Myanmar	Nos. 6, 15
Nepal	—
Pakistan	Nos. 6, 15, 59, 90
Philippines	Nos. 59, 90
Singapore	Nos. 5, 7, 15
Sri Lanka	Nos. 5, 7, 10, 15, 58, 90, 115
Thailand	No. 123

## UNESCO and Human Rights Education

*Valai na Pombejr*

Specialist in International Education  
UNESCO

It is indeed an honour and a pleasure to represent UNESCO at this important training programme for persons working in children's organizations in Asia. I should like, first of all, to congratulate the organizers of the training programme for their initiative in launching a programme on such a vital topic, which invites us to reflect on children's issues, in particular in regard to the protection of their rights.

In this world of violence and violation, in a world where the media show the resurgence of intolerant and racist behaviour, we have to question ourselves on the role and function assigned to school and education. In this respect, since its creation more than 45 years ago, UNESCO's action in all its fields of competence has been aimed at greater mutual understanding and growing cooperation between nations and individuals on the basis of "universal respect for justice, for the Rule of Law and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion..."

UNESCO was created, as we all know, for the purpose of advancing, through the educational, scientific and cultural relations of the peoples of the world, the objectives of international peace and of the common welfare of mankind for which the United Nations was established and which its Charter proclaims. The broad sweep of human knowledge that UNESCO has a mandate to preserve and promote covers all levels of education, all fields of knowledge - humanities, arts and culture, physical and biological sciences, social and human sciences, and communication - in all countries of the world representing different political systems and ideologies. Through its various activities, UNESCO has been constantly engaged

in the task of constructing the defences of peace in the minds of men, women and children ever since its inception in 1946.

At its 18th session, in 1974, the General Conference of UNESCO adopted the Recommendation concerning Education for International Understanding, Cooperation and Peace and Education relating to Human Rights and Fundamental Freedoms. This Recommendation took its inspiration in particular from the provisions of the Universal Declaration of Human Rights, which stipulates that "[E]ducation shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms" as well as to "understanding, tolerance and friendship among all nations, racial or religious groups." In this spirit, the Recommendation stresses the need to introduce "an international dimension and a global perspective" into all levels and forms of education, including in particular "understanding and respect for all peoples, their cultures, civilizations, values and ways of life"; "awareness not only of the rights, but also of the duties incumbent upon individuals, social groups and nations towards each other;" and "Readiness on the part of the individual to participate in solving the problems of his/her community, his/her country and the world at large."

Peace and human rights have always been at the forefront of UNESCO's concern. In its Programme and Budget for 1994-1995, a new major programme area entitled "Social and Human Sciences: Contribution to Development, Peace, Human Rights and Democracy" will be launched and it was decided that resources earmarked for activities relating to those issues will be increased. All the activities foreseen under this programme are intended to make a direct contribution to the building of a "culture of peace," which is an essential component of the Agenda for Peace set out by the UN Secretary-General. This endeavour is based mainly on the search for effective methods of conflict prevention and management; the promotion of intercultural understanding and tolerance; the protection, observance and further development of human rights; the world-wide consolidation of democracy; and the elimination of all forms of discrimination.

Respect for human rights must be constantly present in the

minds and the needs of individuals and groups. This implies a sustained strength of will in order to develop, in daily life, attitudes and behaviour founded on the recognition of the dignity and equality of all individuals. It presupposes that every human being has learnt to behave as a responsible person, to exercise self-control and to be sufficiently open-minded towards others to understand them, respect them and accept that they may manifest feelings or display ways of thinking and acting different from his/her own. It is thus essential that education open up for all individuals in the world - and particularly children - the road to mutual understanding and respect. Education for human rights is therefore designed, through the use of different pedagogical approaches and through the examples of lifestyles set in the educational institutions themselves, to eliminate among children feelings of indifference, prejudice, intolerance and perhaps even selfishness.

In order to be effective and authentic, education for human rights must immediately be put into practice at the level of inter-personal relations at school, in the natural sequence of games or exchanges during which different behavioural attitudes may be brought to light and succeed each other in a continuous ebb and flow which may lead to their permanently taking root. Adults, parents and teachers must be consistent in acting in a predictable and stable manner and controlling the application of the rules, progressively allowing children and adolescents increasing degrees of responsibility compatible with their level of development. But, even more important, in order to change the child's attitude and behaviour, the building-up of his/her character and personality must take place in a favourable climate, propitious to effective inter-personal communication and the manifestations of genuine empathy.

May I remind you that the 1974 Recommendation which I have mentioned earlier aims at ensuring that the principles of "the Universal Declaration of Human Rights and of the International Convention on the Elimination of all Forms of Racial Discrimination become an integral part of the developing personality of each child, adolescent, young person or adult by applying these principles in the daily conduct of education at each level and in all its forms, thus enabling each individual to contribute personally to the regeneration and extension of education in the direction indicated". This education

requires that educators, in collaboration with pupils, parents, the organizations concerned and the community, use methods which appeal to the creative imagination of children and adolescents and to their social activities, thereby preparing them to exercise their rights and freedoms while recognising and respecting the rights of others and performing their social duties.

In order to achieve the task defined in this Recommendation, education for international understanding, peace and human rights must exert its influence from early childhood onward and through a broad range of disciplines, particularly those that are directly concerned with the perception of other peoples and cultures - history, geography, literature and foreign languages are areas where the impact is greatest. In providing children, young people and adults with the cognitive basis required for a better knowledge of others as well as a more thorough understanding of major problems, this education is also called upon to inculcate attitudes of respect for every human being and every culture, together with the realisation that each one of us is responsible for the future of all.

In this respect, the school has an important role to play in helping the children who will become the citizens of the future to develop awareness of world issues, in particular peace and human rights issues, and to develop appropriate attitudes from primary school onward.

May I take this opportunity to present the UNESCO Associated Schools Project to you. This project, launched by UNESCO in 1953, now has a network of 3,000 establishments the world over, of which 423 are located in 14 countries of the Asia-Pacific region. The UNESCO Associated Schools are ordinary schools which, in the normal framework of the activities and curricula established at their respective levels within the existing structures of the countries involved, undertake to inculcate the UNESCO ideal of "constructing the defenses of peace in the minds of men." Ever since the Project was launched, one of its four main fields of study has pertained to human rights education and a wide range of activities has been carried out in this connection, from the level of preschool education to teacher-training institutions. Many of these activities have been based on the United Nations Declaration of Human Rights and the

Convention on the Rights of the Child. Reports on human rights activities are published frequently in the bulletin *International Understanding at School*, as well as in other publications. In contributing to the observance of UN International Years, Associated Schools have often centred their attention on human rights issues. For example, in 1986, the International Year of Peace generated much interest in the study of the interrelationship between peace and respect for human rights. In 1987, the International Year of Shelter for the Homeless led to the study of various human rights topics. In celebration of the 40th anniversary of the adoption of the Universal Declaration of Human Rights in 1988, an exhibition entitled "Associated Schools Project Alphabet of Ingredients for Human Rights Education" was organized, containing some 80 photographs portraying a wide range of innovative human rights activities carried out by Associated Schools throughout the world.

Over the years Associated Schools have contributed effectively to the development of new and effective teaching methods to enhance human rights education. At the preschool and primary school level emphasis is placed on the use of socio-effective methods which strengthen the internalisation of human rights concepts and notions, i.e. respect for others, needs and responsibilities, solidarity, justice, tolerance and cooperation. Such methods often involve simulation exercises, role playing and inter-active techniques. At the upper primary and secondary school levels, socio-effective methods are continued and reinforced with cognitive approaches. In view of the many facets of human rights education, multidisciplinary and interdisciplinary approaches are introduced, involving subject areas ranging from history to art and from science to language courses. Problem-solving and extra-curricular activities are also used. A number of these methods are described in the document entitled *Innovative Methods in the Associated Schools Project*, published by UNESCO in 1988.

In order to prepare young people for their responsibilities in the world of tomorrow, it is important to start from the living realities in the family, in the school and at all levels of society; from their community on to national and international levels. They must be encouraged, through increasing awareness, knowledge and reflection, to acquaint themselves with major world problems, to analyse their



nature and origin, as well as evaluate their social, economic, political and cultural dimensions, to cultivate a critical understanding of questions concerning their possible manipulation, to form their own judgment, to develop their own positions and, lastly, to cooperate with others in the search for solutions to these problems.

NGOs have, in this respect, an important role to play through association with schools and other organizations, such as social and cultural centres, community centres, youth centres and clubs, in preparing today's children for tomorrow's challenges. Experiences, particularly in secondary schools, show that pupils participate gladly and profitably in a wide variety of voluntary activities, such as community development projects, literacy projects, environmental preservation projects and the preservation of sites belonging to the cultural heritage.

I am confident that this training programme will reveal a number of new and effective ways and means to reinforce the protection of human rights and children's rights in our Asian region. Collaboration among our organizations in this field is far more necessary now than before, as the Director-General of UNESCO, Mr. Federico Mayor, stated in the regional conference of the UNESCO National Commission organized last year in Canberra:

"The message of peace, freedom, justice and solidarity which UNESCO is endeavouring to convey through its activities in education, science, culture and communication is too heavy a burden for one messenger alone to bear. What are needed are messengers - and actors - in their thousands. They are to be found among men and women of goodwill everywhere who are helping to organize the forces of the mind in the service of human understanding and well-being."

## PART II

### **Participants Papers**

## BANGLADESH

*Rokhsana Khondker*

Legal Group Bangladesh Shishu Adhikar Forum (BSAF)

### Introduction

The Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989, was designed to raise the nations' political and humanitarian obligations towards their children from the level of best intentions to international law - a step which will bind signatories to higher social, economic and legislative standards, and oblige them to report to the international community on their children's well being.

Up to now, commitments to the protection of children were scattered through more than 80 international treaties and declarations. Most have been drafted separately over a 60-year period since the days of the League of Nations, and often lack a comprehensive vision of children's needs in today's world.

Under the Convention, survival rights include adequate living standards and access to medical services. Development rights include access to information, education, play and leisure, cultural activities, and the right to freedom of thought, conscience and religion. Protection embraces all of the above, but also covers all forms of exploitation and cruelty, arbitrary separation from the family, and abuse in the criminal justice system. Participation rights include the freedom to express opinions and have a say in matters affecting one's own life as well as the right to play an active role in society at large.

In the light of these developments in the international arena, the realisation of the various rights and privileges of working children is gaining momentum as awareness and consciousness increase in a number of developing countries. Thus, nowadays it is generally acknowledged that every child has a right to housing, education, health care and freedom of thought, conscience and religion in

addition to freedom from all forms of exploitation, including cruelty and forced child labour, and the necessary legal protection. Bangladesh is one of the first 20 countries to sign the Convention on the Rights of the Child.

Children are the future of the country and they are the ones who will take over leadership in the future. Thus, it is imperative that they have proper education, growth and nutrition for development. Bangladesh is one of the poorest countries in the world, where the per capita income is less than US \$ 200 per annum and where 80 % of the people live in rural areas. The report of the Bangladesh Bureau of Statistics (1986) shows that 44.2 million rural and 7 million urban people consume fewer than 2,122 calories per day. Bangladesh, a densely populated and disaster-prone country, has very limited resources. About one third to one half of the approximately 4 million children born each year weigh less than 2.5 kgs. Women and children are the most vulnerable groups in the country. Most of the women in rural areas do not have access to appropriate medical facilities; consequently children are born at home, delivered by untrained birth attendants, family members or even by the mothers themselves. About 500,000 of the newborn do not survive their first year and another 300,000 die before the age of five. The maternal mortality rate is about 6 per 1, 000 live births (UNICEF Report).

Some very important issues relating to the situation of children in Bangladesh are discussed in the following sections.

### **Child labour**

Extreme poverty in an economic and social setup which is based primarily on a rural/agricultural production system causes tremendous hardship within family structures and leads to extensive child labour within the massive population of Bangladesh, about 45% which consists of children aged 14 or below. Because of the ever-increasing pressure on the land, groups of the population drift from rural to urban areas, where a multitude of child labour practices can be found: young boys pulling rickshaws, collecting disposables with the noble aim of recycling them (not quite aware of the current concerns of environmental activities), porter boys with a greater load than they

should carry on their heads (a survey shows that 70% of market porters are between the ages of 7 and 15), boys working as waiters and dishwashers in roadside tea stalls, low-grade hotels and restaurants. Boys sell toys and other cheap products on push carts, crush bricks on construction sites, shine old shoes into "new" ones, work in a wide variety of shops as sales boys, serve as conductors on "tempos", the triwheeler public transports in the city. Young girls serve as house maids and garment workers, flocks of children carry tiffin carriers at lunch time and, generally, minors are involved in a host of other economic activities. In the rural areas instances are just as abundant. Carrying twigs for the hearth, helping the elders in agriculture, fishing and weaving as well as household tasks - these are just a few of the examples where children contribute significantly to our national economy; this is the positive view, but in actual fact children should be concentrating on schooling at this age and thus preparing for a more fruitful future life. This undesirable physical and mental pressure, drains the sap out of the lives of the great majority of our youngsters, significantly shortens their life span or results in a life full of disease and suffering during adulthood. In most cases the children are forced into physical labour because of severe economic constraints in the family, so that they have no alternative but to starve at home if they do not go out in search of some kind of employment. Physical labour being cheap, it is no wonder they are over-exploited by individuals, groups or in many cases by organized racketeers who take advantage of their unstable economic status. Often child labourers are given only food and shelter in lieu of services, with no cash wage whatsoever paid by the employers. The extreme population pressure and large family size within the needy groups force them to accept such terms of employment, the only alternative for them being no work and consequent starvation. Thus, the big question remains; how and why are we exploiting our children and to what end? Although some legal provisions do exist to protect them from such abuse, the absence of provisions for social and economic security make the implementation of these laws totally ineffective. In most cases starvation or deaths from malnutrition would occur if and where child labour practices were ended as a result of legal sanctions. A labour force survey has shown that about 15% of the total labour force consists of children, and that 93% of working children live with

their family. About 63% of working children are below the age of 12.

### Child prostitution

Child prostitution is not legal in Bangladesh but is nevertheless on the increase. Severe economic constraints are forcing an ever-greater number of women and children to leave their homes and turn to prostitution, both formally and informally, in a desperate effort to save their families from complete economic destitution. Recently, more and more women and children have been migrating to the urban regions to find employment as garment or other workers, and this increase in job-seekers has made it correspondingly more difficult for them to find work. Some live in urban slums and work at occupations such as flower or chocolate sellers. Most of them are sexually abused by their employer and consequently continue to be victims of circumstances. There are two types of child prostitution.

#### a) Floating prostitution

The little girls aged 8 to 12, who sell flowers, chocolates, etc., in the street or in city parks, are generally physically or sexually abused by people with power, such as the park gardener, who use them in exchange for a very small amount of money or the flowers which the children sell for their livelihood. Most of the girls do not even know the implications of how they are being abused. Gradually they become floating prostitutes. Most of their parents know about it but in some cases the girl is one of the earning members of their family so they say nothing about it and the others keep quiet because of the influential people involved. The exact statistics of child prostitution are unknown.

#### b) Children in brothel prostitution

Children aged 10 to 16 are sold by middle men to those who furnish prostitutes professionally. There are other categories of child prostitutes, including those born and brought up in brothels.

## **Child trafficking**

A new feature of child prostitution is “girl-running” and trafficking across the border to neighbouring countries. It is known that children are illegally lured into crossing national boundaries in the name of better living conditions, only to find themselves engaged in prostitution or being sold in Middle East countries as jockeys for camel races (camel owners prefer small children because of their light weight which, they say, allow the animals to run faster); there are even some cases where the organs of their bodies are used for medical research. The short-term and long-term consequences of such practices, apparently pursued by a handful of powerful and influential people, are complicated international legal and diplomatic conflicts as well as increasing social misery for a large section of economically under-privileged children in Bangladesh. In this context let me briefly outline the existing legal framework for children’s rights in Bangladesh.

## **Laws relating to children**

The existing laws in relation to children are as follows :

- The Children (Pledging of Labour) Act, 1933
- The Factories Act, 1934
- The Employment of Children Act, 1938
- The Tea Plantations Labour Ordinance, 1962
- The Shops and Establishments Act, 1965
- The Factories Act, 1965
- The Vagrancy Act, 1943
- The Constitution of the People’s Republic of Bangladesh

According to the Convention on the Rights of the Child, every person under the age of 18 is a child. But lack of uniformity with regard to working age in our different laws creates various anomalies in their implementation and thus tends to act in a way detrimental to the children.

The Constitution of Bangladesh very nobly highlights the rights and privileges of our children, but they in many cases have only the brutal choice between work or starvation. Children are legally and constitutionally accorded protection from torture and abuse, and the right to education, but where there is an absolute lack of social and economic security, these basic rights and privileges can only be seen as necessary conditions but are entirely insufficient in themselves. One must address the issues specifically related to children as well as the question of providing compulsory primary education, yet to be achieved in Bangladesh in spite of the recent decision in this respect by the newly formed democratic government. It has to be understood that child labour not only deprives the child of his basic human rights but also makes him completely vulnerable; he is immediately subjected to psychological deprivation, criminality, abuse and misuse for criminal activities. He is also subjected to hard work beyond his physical limits at a wage much below the acceptable norm. The employers favour a child labour force whenever available because child workers are the cheapest, meekest and hardest working, and above all because they represent an unorganized labour force which can be very easily contained during industrial action.

### **National policy on children**

Although Bangladesh was one of the first signatories of the Convention on the Rights of the Child in January 1990 and has taken a few steps in an effort to improve the situation of children after signing the Convention, not much has changed yet. Some of the important decisions have been as follows.

#### **a) Compulsory middle school education for girls**

The government has taken measures to introduce compulsory universal primary education and free education for girls up to grade VIII.

In this respect the Bangladesh government has launched a countrywide "Food for Education" programme on an experimental basis to encourage poor and underprivileged boys and girls to go to school. This programme will also encourage children who would otherwise be forced to leave school in



search of employment. A total of 124,000 tons of food, worth about US\$ 25 million, will be distributed under this programme this year and will cover about 4,600 schools in the country. Each child will get 15 kgs of wheat or rice every month if he/she attends at least 85% of the classes.

b) The Decade Action Plan for Girls

The Bangladesh government has formally launched a Decade Action Plan for the Girl Child on 24 August 1993. This Action Plan has been adopted on the basis of the Convention on the Rights of the Child and also on the basis of the SAARC Summit Declaration (May 1990).

The objectives of this Action Plan are to coordinate and strengthen social, legal, educational, health and nutritional programmes and quite a number of measures will be taken for the survival, development and protection of girls in Bangladesh.

c) Children in especially difficult situations

The children who live in urban slums face problems in their daily life with which the government was initially not very concerned. However, after the ratification of the Convention on the Rights of the Child, the government became aware of the problem and took it up as a national issue. Recently the Bangladesh government has taken some steps to adopt a National Plan of Action for Children in Especially Difficult Circumstances (CEDC). Under severe economic pressure people are migrating to urban from rural areas, and most are living on the roadside or in urban slums. Now the Ministry of Social Welfare, in coordination with the Ministry of Law, Justice and Parliamentary Affairs, the Directorate of Labour, the Bangladesh Shishu Adhikar Forum (BSAF) and a network of NGOs, would like to take some steps to make this programme work with the support of UNICEF.

The activities which are likely to be undertaken relate to:

- facilitating access to food, basic education, shelter, health services and other needs of working and street children;
- trying to identify and lobby for the prevention and/or

improvement of labour conditions which are harmful to children, especially girls;

- finding effective measures to work for working children in collaboration between government agencies and NGOs;
- researching and disseminating information about the nature of the problems working children face in daily life, especially girls.

### **Organizations involved in children's activities**

There are a number of international and national organizations which are working on children's issues. The following is a brief outline of some of these.

#### **UNICEF**

UNICEF has been working on children in Bangladesh for quite a long time. It provides financial support and technical assistance to the Government of Bangladesh through various concerned ministries and planning departments and is involved in the implementation of programmes for the welfare of children, and especially disadvantaged children.

#### **ILO**

The ILO, with the support of the German government, has taken the initiative for an International Programme for the Elimination of Child Labour (IPEC). The main objectives of the programme are to abolish child labour in the long term and to help the government to design and implement policies and programmes which can prevent child labour and protect working children in the short term.

The priority areas are:

- to prevent employment of children in hazardous work or employment;
- to protect the youngest and most vulnerable children.

## NGOs

There are several NGOs working with children to protect their rights but only very few children are covered by NGOs. The Bangladesh Shishu Adhikar Forum, with the support of UNICEF, has brought out an inventory of Projects and Services for Disadvantaged Children in four major cities of Bangladesh (Dhaka, Chittagong City, Khulna and Rajshahi). The inventory shows that 34 organizations (orphanages not included) have programmes targeting slum children. It has been found that in most agencies, the main objectives are child health care, family planning (FP), education, income generation, skill development etc. Children's programmes are treated as support programmes. BRAC, GSS and World Vision have a very large programme of education for children.

The Underprivileged Children's Educational Programme (UCEP) has an education and skills training programme for working children. UCEP has adopted a special type of curriculum to assess the needs of the children and the children can complete two grades in one calendar year. Ain-Shalish Kendra (ASK) is an organization which gives health education and legal support through its HELP Project. The Institute of Law and Development (ILD) is working on the rights of the child through seminars, campaigns and exhibitions. SHOISHAB is working with domestic helpers and is running support homes for street children, in the same way as TDH, which is running a major programme in this respect.

### Bangladesh Shishu Adhikar Forum (BSAF)

In 1990 a National Committee for the Coordination of Agencies Working for the Rights and Welfare of Disadvantaged Children was formed. In 1991 the Committee was turned into the Bangladesh Shishu Adhikar Forum, which is now the most important coordinating body dealing with children's rights in Bangladesh. The main objectives of the Forum are to raise people's awareness of children's rights, to formulate a legal framework for the protection of children's rights and to increase the access of disadvantaged children to basic services in pursuance of the Convention on the Rights of the Child (which has been ratified by the Bangladesh government) and the World Summit for Children of 1990.

Bangladesh Shishu Adhikar Forum is a networking organization; any NGO in Bangladesh working with children may become a member of BSAF. Up to now 40 organizations have become BSAF members. BSAF has three groups which aim to promote the forum's objectives:

- a programme group;
- a media group;
- a legal group.

Every group has its own action plan aimed at achieving the desired objectives.

## Conclusions

There are no conclusions. A description of the situation of children in Bangladesh has shown us, to some extent, what the reality of their situation is - a life full of hardship, injustice and physical and mental torture, leading to malnutrition and disease and sometimes ending in premature death.

In respect of child labour, many parents send their children to work under inhuman conditions, and the employers take full advantage of the situation, both parents and employers being in a way captives of the extreme economic circumstances. The parents, or in some cases the children themselves, have no other option but to undertake what work they can find; complete lack of work would further deepen the economic crisis of families, a majority of which already live below the subsistence level. This is the dilemma of an utterly impoverished nation, and one wonders how to escape from this (apparently) vicious circle. On one hand, complete prohibition of child labour and formulation of civilized laws would lead to further poverty and hardship for underprivileged children. On the other hand, the exploitation and abuse which child labour represents are also bound to increase further exploitation of our innocent children as well as of their parents. It must be argued strongly that if no conscious efforts are made to abandon this inhuman practice within the shortest possible time, deep-rooted and colossal damage to our nation will result; there is no denying that the children of today are the adults of

our nation tomorrow. A practice that is destroying a most significant fraction of our present child population will be disastrous for our nation, which must overcome the current temporary critical economic crisis - a crisis in which we find ourselves as a consequence of the utter mismanagement of our financial and social institutions and which resulted from gross abuse of our political system in the recent past by a handful of powerful people without the least respect for just and equitable democratic practices. As part of the conscious effort referred to above, there is an immediate need for the formulation and enactment of appropriate and dynamic policies, which take into account the great economic vulnerability of children in the country and, above all, human considerations.

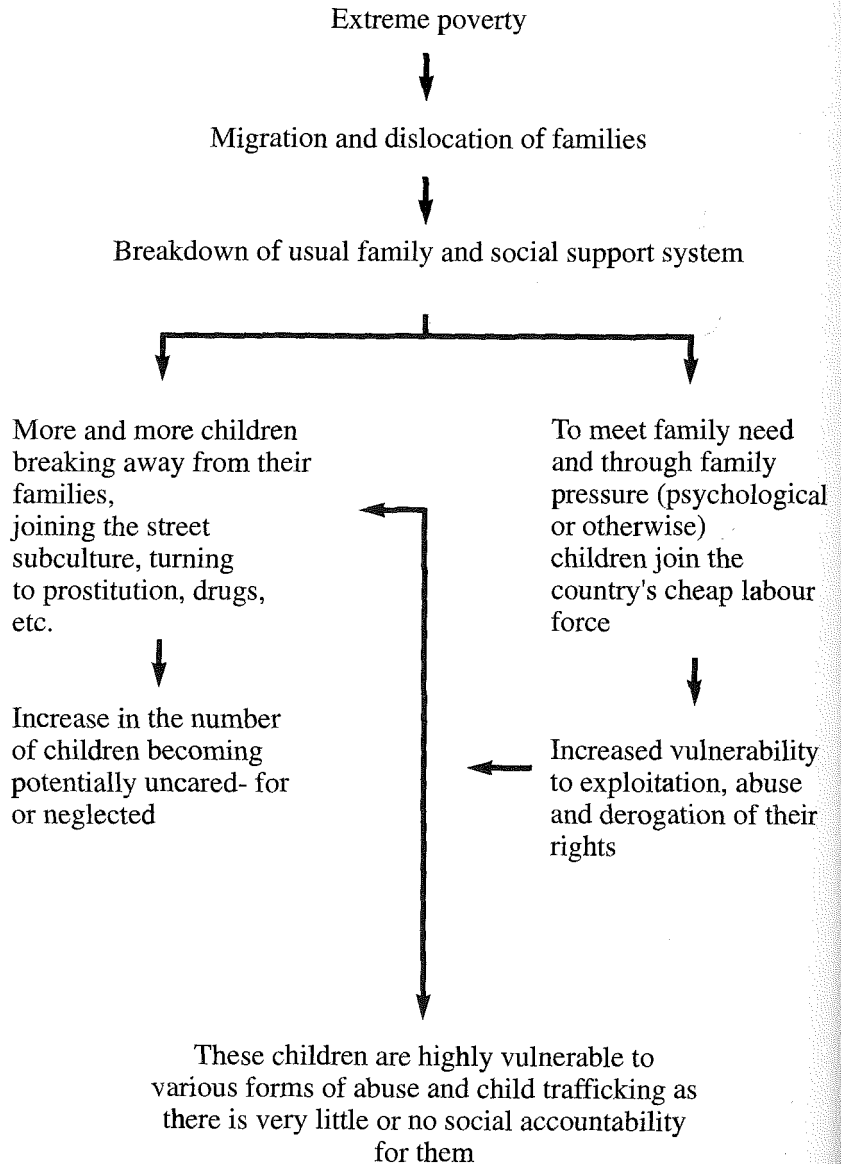
While there is an immediate need to organize groups to provide the necessary support for children in urban as well as in rural areas, emphasis must also be put on raising social and political consciousness in the majority of our vast population which lives in rural areas and which is dependent mainly on our agrarian economy. Education of the people is a prerequisite for such attainments in a country where the government has not succeeded in providing even compulsory primary education for its children as yet and - it need hardly be said - a positive attitude on the part of the socio-political-administrative power structure of elites is key for the success of the child uplift programmes which are ultimately tied to the gradual uplifting of our economy and, we hope, to the elimination of poverty in a systematic manner.

## BANGLADESH

*Helen Nazmun Nahar Rahman*

SHOISHAB - Bangladesh

We are a nation of 120 million, living in a country one third the size of Pakistan; a large section of the population lives on newly formed unstable marginal land and the yearly per capita income is US \$ 200. Over 48 million of the country's population is under 16 years of age, and the proportion of young people is increasing. About 50% of the population live below the poverty line (daily calorie intake as indicator). With this scenario in mind I will discuss some of the issues which concern the children of Bangladesh, and what my organization is doing in this respect.



Some of the complex and interrelated problems that Bangladesh has to combat are:

- the existence of ever-increasing numbers of uncared-for children, i.e. street children;
- child prostitution and sexual abuse of children;
- the process and nature of child labour in the country.

### **Street children/ sexual abuse/ prostitution**

One recent study makes a rough estimate of 0.2 million street and potential street children in Dhaka city today (which has a population of 4 million). The number of boys and girls is almost equal. This number includes children living on the street within their own subculture plus the children who spend increasing amounts of time away from their family habitat on the street on their own, in the process of becoming totally streetwise and joining the subculture.

The combination of social unaccountability and the subculture draws the children, particularly girls, towards prostitution by closing down any other possible option. Social customs, taboos, stigmas and practices facilitate this entire process.

There are no statistics or serious publications available on the amount and nature of child prostitution in Bangladesh, but the work experience of some of the NGOs including my own organization, can give us a picture.

- These children are between the ages of 7 and 16.
- They work for very little money; they become involved in prostitution almost without realising what it entails in terms of their physical health or future life.
- Sometimes they work through pimps; sometimes prostitution takes the form of marriage (particularly the initiation to prostitution). In that case one girl may go through the ritual of street marriage and divorce with four to five different people within a week.
- Most start prostitution before reaching puberty.



- My organization has identified and is trying to work with girls who have been working as prostitutes for several years (five to seven years) and who have lost their marketability as prostitutes. They live by stealing from their peer groups, or by taking another young girl (four to six years old) under their protection and grooming/initiating her to prostitution.
- No health services are provided by their pimps or protector/abusers.
- They have extremely low self-esteem about their lifestyle and themselves.

Street girls working as prostitutes are not immediately visible on the street. There is almost no organization which has a well thought-out comprehensive programme for work with child prostitutes, but recently a group of national NGOs took the initiative to launch a campaign against the sexual abuse and exploitation of children. Their agenda includes the provision of necessary support services for these children.

The government treats the problem of prostitution as a form of criminality and its attempts to rehabilitate the girls without taking into account the social stigma against them are consequently ineffective.

SHOISHAB has been working with these girls for the last two years mainly by providing regular health services, emergency shelter and counselling services for the victims of rape and their families. Very young boys living in congested slum areas who are left on their own while the parents or guardians go to work are also victims of rape and abuse. Sexual abuse or harassment at their work place or within the family structure is also an area of great concern and needs sensitive and careful handling.

### **Child labour**

Earlier I have tried to draw a picture of how extreme poverty, neglect or family need etc. cause a child to join the country's cheap labour force. There are 2.8 million working children (10 to 14 years

old) in Bangladesh according to the 1985 to 1986 labour force survey; this constitutes 10% of the country's total labour force of 30.9 million.

My organization is mainly involved with the children working in the informal sector. We have a large programme for child domestic servants, which includes an education programme for the children and counselling services for their parents or guardians and their employers. Initially this was a nearly impossible task but gradually we are moving towards our goal of forming a forum for domestic servants through which they can achieve the basic rights of education, food, shelter and emotional and physical security by changing the present near- servitude situation of these children to a semi-fostering condition/relationship between the child concerned and the family that employs the child. We are trying with great care to help a working child without legitimising child labour. We also believe and hope that this working model can be used for children working in other areas of informal and family-based enterprises.

In this context I wish to draw attention to the fact that the child labour issue must be understood and analysed within the existing social and economic context of the country. Having said this, I would also like to emphasise that the country's economic condition must not be used as an excuse for exploiting children as a cheap source of labour, nor should we intervene if we have no enforcement mechanism backing up the intervention.

Intervention alone would probably aggravate the situation, as the problem would then most likely go underground and make the children even more vulnerable to exploitation and abuse.

## BHUTAN

*Ratan Ghaley*

People's Forum For Human Rights, Bhutan (PFHRB)

### Introduction

The Kingdom of Bhutan is situated in the Himalayas, bordered by Tibetan Autonomous Region of China to the north and the Republic of India to the south, east and west. The country has an area of approximately 47,000 sq. kms. and a population of about 600,000. Three major ethnic groups live in the Kingdom. The ruling Ngalongs belong to the Tibetan Mongol family and inhabit the western parts of Bhutan. They represent about 16% of the total population. Eastern Bhutan is predominately populated by Sharchhops of Indo-Mongol stock, who constitute about 31% of the population. Nepali-speaking people live in southern Bhutan; they are of Indo-Aryan origin and form about 53% of the population. While the Ngalongs and Sharehops practice lamaist Buddhism, the southern Bhutanese are Hindus.

The country is ruled by an absolute and hereditary monarchy established in 1907. Development plans were launched in 1960 with the help of India. As per the Indo-Bhutan treaty of 1949, Bhutan agreed to be guided by the Government of India in the conduct of its external affairs. Bhutan has no diplomatic ties with her northern neighbour, China. The capital, Thimphu, houses two residential embassies, of India and Bangladesh. In 1971 Bhutan became a member of the United Nations. Bhutan is also a member of the Non-Aligned Movement, SAARC, the Colombo Plan, the International Monetary Fund, the World Bank and the Asian Development Bank.

The economy of Bhutan is purely agrarian and falls within the category of LDCs. The per capita GDP for 1988 was estimated at approximately US\$ 202.00.

## **The situation of children in the country**

The situation of children in the country varies in accordance with the economic status of their families. The situation of urban children is much better than that of children in rural areas. The government claims that there has been an improvement in health and educational facilities, but this is limited to a few areas only. Problems in the interior have remained the same; there is much illiteracy, superstition and poverty. The benefits of development and modernisation have been limited to a few areas only, where people are rich and prosperous. Toyotas and Mercedes are seen only in the capital and in a few areas in the western parts; the rest of the country still uses old mule tracks.

Although the government boasts of signing and ratifying the Convention on the Rights of the Child, it has yet to implement its various provisions. An assessment of the condition of Bhutanese children in general shows that they are not only deprived of much-needed health and education facilities but are also denied their rights to freedom. The widely publicised statistics of the government showing an improvement in health and education facilities cannot be trusted. Prior to 1990, Bhutanese government documents showed the population to be 1.3 million, but now it is officially claimed to be somewhere around 600,000.

Since the movement for human rights and democracy began in the kingdom, the children of southern Bhutan have become the victims of the royal regime. Thousands of children not only lost their right to nationality but were also forcibly evicted from the kingdom. Punishing children for the convictions or political beliefs of their parents is common in Bhutan. Although gross violations of children's rights have taken place in the Kingdom, Bhutan is relatively free of such social vices as child prostitution, child labour, child trafficking etc, mainly because of the small size of the population. The government has yet to formulate laws concerning children's rights and welfare.

## **Waste of human resources**

Although the government claims to have introduced universal primary education, the percentage of enrolment at the primary level is only about 20% and 80% of children remain without education. Education beyond the primary level is strictly regulated in accordance with the manpower requirements of the country. Nationwide Common Examinations are held at class six and eight levels. Almost 60% of students drop out at class six and more than 50% at class eight. Only a few manage to get up to class ten, where they are again screened. By the time they enter junior college and college, only a handful remain in the education system.

No one really knows what happens to those thousands of children who drop out at class six. Rich families can always take their children to India for education even if they have failed in the Common Examination. But poor children, once they have failed in the Common Examination, are denied further education. As education is provided free by the government, it is, as stated above, strictly regulated in accordance with the manpower requirements of the economy. Thus a social demand for education is simply not available. Moreover, the government is afraid of the problem of educated unemployed, and therefore begins to cut down the number of students from the beginning of the education system.

## **The plight of the children of Southern Bhutan**

As mentioned previously, after the movement for human rights and democracy was launched, the children of southern Bhutan became the victims of the royal government. As a first step, all the schools in southern Bhutan were closed down, which affected the education of over 60,000 school children. Although a few of these schools have re-opened recently, admission is only possible for the children of those in the security forces, civil servants and supporters of the government. The school authorities demand production of a police verification certificate for admission of a child from southern Bhutan. Hence thousands of children have been denied admission to school.

The 1985 Citizenship Act was made retroactive with effect from 1958, thereby denying the right to nationality to a large number of children from southern Bhutan. Previously (as per the 1958 Nationality Law), any child born to a Bhutanese father used to have Bhutanese citizenship automatically. However, the 1985 Citizenship Act required both parents of a child to become Bhutanese nationals for the child to qualify as a Bhutanese citizen. Since the Act was made retroactive, all children whose mothers were non-Bhutanese were listed as illegal immigrants during the census of 1988.

Children are forced to wear the dress prescribed by the government. Non-compliance results in punishment. Children from southern Bhutan were forced to give up their dress, culture and language. The teaching of Nepali was banned in 1989. From the very beginning, children are taught to obey the authorities and never question them.

Bhutanese children are not permitted to talk about human rights and human rights campaigns are banned in the Kingdom. Freedom of speech and expression, freedom of assembly and union and freedom to seek justice are denied. People cannot seek justice in Bhutanese Courts against government atrocities. Juvenile courts and prisons have yet to be developed.

The government resorted to mass eviction of people in a vain bid to find a permanent solution for the cry for human rights and democracy in Bhutan. As a result there are about 100,000 Bhutanese refugees in Nepal and India; 34% of these are children who were forcibly evicted along with their parents. There are many cases of torture and atrocities committed against children by Bhutanese security forces. Many children suffer from nightmares, guilt and psychological trauma as they have witnessed the rape of their mothers, sisters and relatives at the hands of the Bhutanese security forces.

### **The plight of refugee children**

Bhutanese refugee children are the victims of human rights violations by the Government of Bhutan. In Bhutan, in the old and happy days, most of these children were students. Today they are

destitutes who have no present and no future. Although the international aid agencies do their best to take care of them, their efforts remain insufficient. There continues to be a shortage of health care facilities, nutritious food and educational facilities. The most important issue is, how long will these children remain destitute, and what help and assistance can the international community offer to resolve their problems so that they can go back to their motherland and live a normal life?

### **The role of the international aid agencies present in Bhutan**

The international aid agencies in Bhutan have simply kept quiet with regard to the growing plight of the children in southern Bhutan. These aid agencies are more concerned with their own survival and the continuation of their projects. UNDP, UNESCO, UNICEF and WHO have never raised the issue of human rights violations by the Government of Bhutan. On the contrary, by multiplying their projects they have indirectly helped the Bhutanese regime. As NGOs are not permitted inside Bhutan, no one really knows how effective these bodies are in promoting people's well being. As the media are not free, no one is in a position to judge the performance of these agencies nor that of the government.

These agencies have done little to spread human rights education within Bhutan, as such activities are banned in the Kingdom. Their role is limited to carrying out their projects and keeping the royal regime in Bhutan happy.

The Peoples Forum for Human Rights, Bhutan (PFHRB) is deeply concerned with the protection of the rights of Bhutanese children. PFHRB has not been able to do meaningful work, as human rights NGOs are not permitted to work inside Bhutan. Therefore, the issue of the Bhutanese refugee children and the protection of their rights are at the top of the PFHBR agenda. A separate section with a full-time coordinator has recently been set up to fully concentrate on children's rights issues and subjects relating to child abuse and exploitation. The section is expected to develop an information network and carry out research and studies on the situation of children both inside and outside Bhutan.

## Conclusion

The situation of children in all the countries of South Asia is far from satisfactory. Children have been made victims for the offences of their parents; they have been exploited in various ways, they have been abused, they have been sold and their rights have simply been crushed. The children in our region are refugees, beggars, destitutes, workers, slaves and servants. It would seem that the International Convention on the Rights of the Child, is not meant for our children. They can only dream of its provisions. It is the prime duty of the people of our region to fight collectively against all forms of child abuse and protect children from becoming refugees or destitutes. The Bhutanese example is but one; tomorrow another group of children might become destitute. Therefore, the protection of children anywhere in the world requires a collective struggle by all people committed to the protection and promotion of children's rights. Let us therefore raise our collective voice in a show of solidarity and support for all destitute and defenceless children.



## **Cambodia**

*Leang Khem*

*Yann Pinnry*

Human Rights and Community Outreach Projects  
"The Outreach"

### **The situation of children in Cambodia**

Twenty years ago, war destroyed the life of the Cambodian people. After the Paris Agreement of 23 October 1991, the Supreme Court of Cambodia was designated to improve the nation's political and humanitarian condition.

Outreach is a non-governmental, non-political and non-profit organization. Its first meeting was held on 10 September 1992 in Phnom Penh, the capital of Cambodia. The Charter of the organization was approved by its members on 15 September 1992. Outreach was recognised by Prince Norodom Sihanouk, Chairman of the Supreme National Council, on 19 December 1992 and by the United Nations Transitional Authority in Cambodia (UNTAC) on 31 December 1992.

What makes Outreach unique is its emphasis on human rights through the development process, and great concern for children's development.

Women in Cambodia account for 60% of the adult population, head 30% of all households, make up 60% of the agricultural work force and have an average of five children each; however, they account for only 19% of upper-level high school students and have a literacy level far below that of the male population. The infant mortality rate is one out of five under the age of five. It is generally acknowledged that every child has a right to housing, education and health care. However, after the destruction brought about by the war, many parents are extremely poor, and cannot provide their children with adequate nutrition, education, or health care.

The situation of children in Cambodia is very bad right now. There is extreme poverty in an economic and social setup which is based primarily on rural/agricultural production.

Child prostitution is not legal but is increasing in the country. Severe economic constraints are forcing an increasing number of women and children to leave their homes and go into prostitution.

More and more girls and children aged 12 to 16 are migrating from Vietnam to Cambodia to get jobs as taxi girls. There are many Vietnamese girls in the night clubs, hotels and restaurants of Phnom Penh.

### **Organizations involved in children's activities**

There are 100 international and local NGOs working on children's issues. The following is a brief outline of some of them.

#### **International NGOs and IGOs**

UNICEF, Rädda Barnen, UNESCO, Australian Fund Children, etc.

These have been working on children's issues in Cambodia for quite a long time. They provide financial support and technical assistance to the Government of Cambodia through various ministries and departments concerned with the planning and implementation of programmes for the welfare of children, particularly disadvantaged children.

#### **The local NGOs**

Outreach, Khemara, Licado, ADHOC, etc. work together on children's issues and cooperate with international NGOs.

Outreach works towards social justice, progress and development. Its principal activities are:

- promoting public awareness on human rights and fundamental freedoms;

- training of trainers in documentation and data gathering on children's rights abuses;
- promoting civic education and national and regional reconciliations;
- establishing of linkages among human rights organizations nationally and internationally;
- providing assistance and counselling to families whose heads of household are in detention;
- promoting rehabilitation and rural development projects.

The ravages of war have resulted in great difficulties in the daily lives of the Cambodian people; the living conditions of the people, especially of the children, leaves no place for hope. As 75% of Cambodians are poor, the children are living under the guardianship of persons who are facing hardship constantly.

Two decades of war have left some children orphaned. Some have lost both parents but most of them their fathers, and they live with their mothers who alone take care of four to six children.

Particularly difficult to settle is the problem of urban street children who dwell at markets places, in pagodas, or by the sides of restaurants. The Ministry of Social Action and UNICEF have taken measures to provide lodging to the homeless children, but it is an impossible task to meet the requirements of all the needy children.

Most of the urban street children come from the provinces, their parents being very poor. In certain regions which are particularly affected by natural calamities, production has come to a standstill both during the rainy season - with floods, and in the dry season - with drought.

Urban street children survive by begging, selling small items of food, collecting scrap in streets or at markets, using piles of garbage as sleeping bags and stealing.

The children do not only embark upon these activities to ensure their own means of survival but also that of their whole family.

Consequently, they are faced with health, nutritional and other problems. The result of a day's work cannot ensure their basic needs and this prevents them from receiving adequate education.

Parents or guardians cannot afford to buy enough school material for their children. In remote regions only children up to the age of seven to ten go to school; this is due to the fact that they live far away from the school and their parents have little money to provide for schooling.

We have met and interviewed children and guardians at various places.

- On piles of garbage:

Out of 86 homeless children between the ages of six and twelve 30 have had no schooling because:

- they had no guardians;
- their living conditions were very bad;
- they were so poor that they had to leave school;
- they arrived late at school due to bad living conditions and were punished by teachers;
- they lived with their grandmother or grandfather as they were parentless;
- they had to pay overtime class fees which they could not afford;
- they could not afford school materials;
- they were being ostracised by their classmates.

- At the Sre Ampil Village, Kien Svay district, Kandal province:

There are 452 children between the age of five and fifteen. Because they lived far from a school and their parents were poor, 85 of these children between the age of six to ten had not attended school.

The war destroyed many homes as well as hospitals and schools recently built in rural Cambodia. An added tragedy is that many of the soldiers involved in the fighting are children themselves. From a young age, children are trained to handle weapons and kill; this is especially true for Khmer Rouge children. The long term effects of this on children and on society can only be imagined.

Prostitution is growing rapidly in Cambodia; prostitutes are usually between 12 to 16 years of age. The abduction of young girls, or their sale by friends or relatives, is becoming commonplace. Reports of the disappearance of young teenage girls and boys are on the local news several times a week. Despite the gravity of the situation, the government has not done anything to address the problem. As a result, more and more children will be victimised and likely to contract sexually transmitted diseases including AIDS.

While the government has ratified the Convention on the Rights of the Child, the provisions of the Convention are not widely understood nor followed. Also, the government has yet to pass a law for the protection of children. In principle, the government has agreed that no child under the age of 16 nor child with disabled parents should be conscripted into the army. However, children are still conscripted without due regard to their age or family situation. The result is that many families have been driven to flee their homes to protect their children from being forced to join the army.

Recently, however, the Parliamentary Commission of Human Rights established a Committee entrusted with studying children's concerns and taking appropriate action. Children in jail and street children are just two of the pressing topics the Committee is expected to address.

Another area that deserves more attention is the quality of Cambodia's orphanages. Currently, the orphanages feed, clothe and send the children to school but do little more to help children develop. Orphanage staff are not trained to deal with the special needs of the children.

Coordination amongst NGOs needs to be developed. So far, international NGOs have been slow in responding to the needs of Cambodian children. When they have acted they have often failed to

involve local Cambodian NGOs in the process. Also, national NGOs have not yet learned to coordinate their activities so as to provide as much assistance as possible.

## CHINA

*Xiao Ping Guo*

China National Institute for Educational Research

### **The current situation in the development of Chinese children**

China is a country of rich cultural heritage; taking good care of the elders and children is our traditional virtue. In recent years, with the development of the national economy and the enforcement of the family planning policy, Chinese children have attained a higher level of nutrition, health, basic education and literacy. In 1980, China was classified as one of the lowest countries in relation to the rate of lower birth weight (LBW) by the World Health Organization. The infant mortality rate decreased to about 22‰ in 1990, which is below the world average. According to the national statistics of 1975 and 1985, the average rate of children's height and weight increased by about 2%. The rate of inoculation against diphtheria, pertussis, tetanus, measles, poliomyelitis and pulmonary tuberculosis has been above 85% since 1990. Both the government and relevant organizations have been involved in the inoculation of children and consequently the number of children suffering from diphtheria, poliomyelitis or measles has been close to zero in recent years. Some other infectious diseases, such as pneumonia, pulmonary tuberculosis, diarrhoea or mumps can now be treated in time and have a higher rate of cure.

As for basic education and literacy, the overwhelming majority of schoolchildren has obtained access to education. The rate of enrolment in primary school was 97.8 % in 1990 and, with the development of secondary education, most graduates from primary school can enter junior high school; the proportion of students going into secondary school was 76.4 % in 1990. The level of illiteracy and functional illiteracy for those over fifteen is decreasing year by year; the rate was 15.88 % in 1990. I believe that Chinese children will continue to make great progress in their physical and mental health in a country which gives so much priority to children.

## **The main problems faced by Chinese children**

China is also a developing country, and in different areas the levels of development are not equal. Thus, the main problems faced by Chinese children generally occur in the less developed areas, such as remote villages, mountainous districts or minority areas. One of the main problems in these less-developed areas is lack of school attendance. Certain parents cannot afford to send their children to school and consequently some children are unable to go to school from the time they reach school age and others may drop out; 80% of these are girls. Other reasons for lack of school attendance include great distances between school and home, a divergence between textbook information and practical needs, and certain old-fashioned ideas. The fact that these children cannot finish their basic education, results in a higher illiteracy and functional illiteracy rate. In the less developed areas, public health and medical care, especially maternal and child care, are also poor. Some conditions, such as malnutrition, lack of development or slight mental retardation cannot be diagnosed and cured in time.

## **The legal protection of Chinese children**

In China, children have very good legal protection, as they represent the hope of the Chinese nation. Many special provisions relating to children's rights are included in a series of comprehensive national laws, in addition to which there is a law on compulsory education. This law specifies that the school, family, government and society must try their best to allow each school-age child access to education. Another law, the Law of the Protection of the Child, is the first special comprehensive legislation formulated for children by our government; it emphasises the care, respect, protection and education required for children, and calls on the family, the school, society and the law for protection. On 29 August 1990 our government signed the Convention on the Rights of the Child and ratified it in December 1991. This Convention, based as it is on the best interests of the child, has the same meaning for all peoples everywhere, and has consequently won high praise and support not only in China, but also



in many other countries as soon as it was adopted by the General Assembly.

On 18 March 1991, premier Li Peng of the State Council of China signed the Universal Declaration of the Survival, Protection and Development of the Child and its Plan of Action in the 1990s in the name of China. As a response to the spirit of the World Summit for Children, our government enacted the Programme for the Development of Chinese Children in the 1990s on 9 March 1992. In a sense, the enactment of this Programme shows that our government thinks highly of child development in China and also means that our government accepts the international efforts made to protect children's rights. The Programme specified some of the goals for Chinese children in the 1990s and listed some relevant measures to help realise them. It emphasised that, throughout Chinese society, everyone must try his best to ensure maximum child survival and development, especially in the less developed areas. It also gave much priority to the education of girls, regarding women as the key to child development and happiness. In order to realise the above goals, some relevant supervisory institutions were established from central government to local governments.

The protection of children's rights and the promotion of child development are common desires of everyone in the world. In other words, they are the common task faced by all, and therefore they must be done jointly by all. China has much to do on an on-going basis. I hope and believe it will be successful.

### **The activities of the non-governmental organizations in China**

Chinese non-governmental organizations have been playing as important a part as Chinese government organizations in protecting the rights and development of Chinese children. They differ in that NGOs focus more on children living in less developed areas. For example, the Hope Project, which was established by the China Youth Development Foundation in October 1989, aims at supporting school drop-outs in the less-developed areas. It supports each drop-out until the end of primary education. With the help of the Hope Project, 328,749 drop-outs throughout the country have gone back to school.

Another is the China Child Foundation. This Foundation provided financial support and various goods for children and their schools in less-developed or disaster-struck areas in 1991. Last year it decided to found a Girl Scholarship in order to encourage girls to enter and continue in education.

The Child Development Center of China is a non-governmental applied research institution which aims at promoting the overall development of Chinese children. It makes field visits to determine the current situation, main problems and development trends, and collects data on the nutrition, health, psychology, education and socio-economic status of Chinese children. On the basis of these data it offers consultation services through the Mother and Baby Health Center, the Child Health Center, the Child Nutrition Center and the Child Psychology and Education Center. The Soong Ching Ling Foundation has also been contributing to child welfare, health and education since its establishment in May 1982. These impressive activities show that child development in China not only enjoys the support of the Chinese government but also receives considerable assistance from Chinese NGOs and individuals.

### **International organizations in China**

Cooperation at the regional, national and international level has been highly effective in promoting child development in China. International organizations such as UNESCO, UNICEF, the World Bank, the Asian Bank, and some international foundations have offered a great deal of help to China. For example, in order to finish this paper I went to Guizhou Province in southwest China in May for a field visit and to collect some relevant data. After a three-hour trip I arrived at a small village where I saw a desk and chair which had been provided by UNICEF. The GIP in Gansu Province and the Project of Education For All, which were supported by UNESCO, have made great progress in promoting basic education, especially for girls. The ZiGen Foundation is an overseas Chinese organization registered in New York. From the beginning of 1989, it has supplied 30 to 50 R.M.B. yearly for each girl living in the 13 poor villages of Leishan county of Guizhou Province; the funds come from a

contribution of 1% from the yearly salary of each member. As a result, the female enrolment rate has increased from 20% in 1988 to more than 85 % in 1992 in these villages.

Before finishing my paper I would like to say that the cause of the child is the cause of all human beings. The future of the child is the future of all human beings. We must therefore join together to protect and promote the rights and development of today's children for the future of all human beings.

## CHINA

### *Zhong Liang Xue*

Working Group with Concern for Juveniles of  
Wuxi Education Commission

Wuxi, a municipality directly under the Jiangsu Provincial Government of the People's Republic of China, is located on Lake Taihu and within the lower reaches of the Changjiang River, 120 kms away from Shanghai. It is among the 15 economic centres and ten key tourist cities in China. In 1992 its GNP reached 28,800,000,000 yuan, which represents a 55.8% increase over the previous year. Wuxi has a population of 4,230,000, including 330,000 pre-school children below the age of seven and 600,000 primary pupils and middle-school students.

With the development of the economy, social services have also been improved. The protection of children has received much more attention, and has the following three features:

- 1 Wuxi Municipal Government attaches importance to the protection of children and the social environment is continually being perfected for this purpose. It has:
  - a) formulated a series of statutes to give a legal base to such protection. The municipal government and its subordinate departments have issued more than ten statutes, such as Temporary Provisions for the Protection of Juveniles, On Early Childhood Education, On the Prevention of School Drop-Out, On the Development of Special Education, On the Rectification of Cultural Markets, etc. The government strictly prohibits the employment of child labourers below 16 years of age, and has definite stipulations on the protection of labourers between 16 and 18 years old.
  - b) put into practice a system of target responsibility so as to adopt workable measures. At the beginning of each year the government selects several targets based on the focal points

of the protection programme and assigns them to its subordinate departments. At the end of the year, the government checks on the attainment of these targets, and meanwhile, deputies to the City People's Congress regularly supervise their implementation. In August of this year the government organized administrative units of education, public health and public security for an all-around inspection of the enforcement of the Project for the Promotion of Pre-Natal, Post-Natal and Pre-School Care;

- c) provided material aid and assisted undertakings promoting the development of children. The annual growth rate of the financial allocation to the cause of children by governments at different levels in Wuxi exceeds that of Wuxi's revenue. Recently a large number of schools, science houses, children's theatres, amusement parks and stadiums have been built or enlarged. There are five large-scale Children's Palaces. Each township in the rural areas has a Children's Cultural Centre, and so have many neighbourhood committees in urban districts. The government also provides financial assistance for publications, audio-video products and other children's reading material.

Health conditions have improved. The total number of gynaecologists and obstetricians is about 1,000 and that of paediatricians 300. More than 850 full-time staff members are working at health centres for maternity and child hygiene. Each middle school has its clinic and doctors and there are part-time health workers in primary schools and kindergardens;

- d) strengthened the administration of public places and purified the social environment. The municipal government has ordered the administrative units of commerce, public security, public health and culture to exercise strict administration over public places. Anything which impedes the healthy development of children is forbidden. For example, in urban districts, a number of video game machines for gambling, with children as the customers, were banned within the first half of the year.

2 In education, nine years of compulsory education are being enforced and children's right to receive an education is safeguarded. In 1986 the Compulsory Education Act of the People's Republic of China was promulgated, which stipulates that all children who reach the age of six must receive nine years of compulsory education. In order to realise this, the Government of Wuxi has done the following:

- a) increased financial input to improve school conditions. The government's investment in education greatly increases every year. Wuxi's revenue increases by 4% per annum, and the annual increase in financial allocation to education has reached 20%. Now 65% of school buildings in urban districts and 90% in rural areas have taken on a new look.

Much capital has been invested in training qualified teachers so as to improve the teaching quality. In primary schools 89.5% of teachers have diplomas and are up to the qualification standard, and in junior middle schools the figure is 72%, both of which are far above the national average;

- b) carried out educational reforms and perfected the system of education administration. In the countryside we have the new system, called "Schools run and administered by the three levels of county, township and town," where the responsibility of governments at different levels has been made clear and children's right to go to school in rural areas has been guaranteed. We call this "Education for the people and by the people."

Schools not only impart knowledge to students but enable them to develop morally, intellectually and physically. In addition to cultural courses, classes in music, arts, sports and extra-curricular activities must be guaranteed. Students do eye-protecting exercises and between-class exercises every day. There are sports meetings once a semester in each school, as well as art festivals and science activities. Inspectors from educational administrations often come for supervision;

- c) made efforts to develop special education (for deaf-mute, blind and mentally-retarded children) so that each child has the opportunity to go to school. There are four special schools, seven teaching points within ordinary schools and two pre-school classes for deaf-mute children, five special schools and five teaching points for mentally-retarded children and nine teaching points for blind students. Over 90% of the deaf-mute children and 98% of blind and mentally retarded children are now at school;
- d) spread propaganda so as to reach a consensus on the importance of compulsory education. The municipal government has convoked three large-scale special conferences concerning the work on education and conducted seven training programmes for county magistrates and heads of townships and towns, to enable them to study educational policies and regulations. The mass media have aroused enthusiasm for education. A great many parents have gradually understood the importance of education and have sent their children who were drop-outs back to school. The drop-out rate for primary pupils has now decreased from 0.06% in 1988 to 0.004% in 1992, and that of junior middle school students from 6.61% in 1988 to 2.76% in 1992.

So many people are concerned with education that contributions from enterprises and individuals reached 120,000,000 yuan from 1989 to 1992.

Thanks to the enforcement of the above-mentioned measures, the participation rate of pre-school children in kindergarden is now 76.2%, that of school-age children in primary school 99.98%, and that of primary school graduates in junior middle school 98.77%. Wuxi is now among the first cities in China to have reached the State-set targets in the achievement of nine-years of universal compulsory education.

- 3 Comprehensive measures have been taken to prevent juvenile delinquency. Ever since the reform and opening-up of China, great improvements have been achieved in people's livelihood and their cultural life. Young students have more scope for richer extracurricular activities.

Owing to their immature way of thinking, low levels of self-control, difficulties in differentiating between truth and falsehood and lack of alertness against unhealthy tendencies, minors are liable to go astray and a few even commit crimes.

The following steps have been taken to prevent juvenile delinquency:

- a) in schools, there is a system to help and educate students who behave badly; two to three teachers will be responsible for the help and education of one student. They are required to report their work to the headmaster. Schools will also gather these students together and give them some legal education so as to improve their awareness of the importance of observing laws;
- b) training classes are open for parents in order to upgrade their ability to educate and protect children. Parents are required to coordinate with the schools for the legal education of their children. Training classes of this kind have been popularised in all primary and middle schools;
- c) community education is enhanced to provide education and protection for minors. Students will continue to receive education and help after school and on vacation. Community education has become a must for grass-roots governments and the police. Some social groups voluntarily set up special organizations for the protection of children, such as the "Association for Caring for the Next Generation," "Children & Youngsters Mediation Committee" and "Research Society for Juvenile Education," all of which contribute greatly to this work;
- d) a reform school has been set up for junior middle school students who are guilty of slight violations of the law. They will continue to acquire knowledge, and will receive more



legal education and learn some basic labour skills. In this way, their personality is fully respected. Those who behave well can return to ordinary junior middle schools. The others can freely choose to continue their studies after graduation or find a job without any discrimination against them;

- e) special protection is provided by the judicial departments. The principle is to educate, persuade and redeem law-violating minors, punishment being only a supplementary means. On the basis of this policy, courts of different levels have all opened special juvenile court-rooms. When a court session is open, experts on education will participate in the trial as assessors. However, these cases will not be publicly tried and names and photos will not be disclosed. Juvenile delinquents will be detained and dealt with separately in order to reasonably extend their time for study, increase their food consumption and decrease their labour intensity in comparison with adult criminals, all of which helps them make progress.

The State has demanded that in the year 2000, the crime rate by minors below 14 years of age should not exceed two per 10,000 of the population, while in Wuxi it has been kept at around one per 10,000 for long.

Another aspect of judicial protection is the protection of the legal rights of children. For example, an eight-year-old girl who was deserted by her divorced parents obtained legal protection by suing her parents this August. At the trial, 35 divorcing couples were invited to the court and were greatly touched. The trial was reported by both the Wuxi Daily and Wuxi TV. Its social impact was rather great. Twelve couples have offered to adopt the child.

- 4 On the whole, the work of protecting children is well done and the local people are satisfied with it, but personally I think there is room for adjustment and improvement, mainly in the following three areas:
  - a) family protection is not scientific enough. In Wuxi one-child families prevail. Many parents spoil their children by excessive pandering allied to lack of education and

discipline. As a result, these children become "little emperors". Some are overly dependent and selfish. They dislike labour. They are not skilled in handling relations with other children. Some children's health is affected because of the over-consumption of high-calorie foods. When the children begin their school life, their parents usually place excessive hopes on them, resulting in heavy psychological pressure, so that some children even leave home.

The only solution is an improvement in the quality of parental care and consequently long-term comprehensive plans should be made by the government to gradually train these parents by various means;

- b) some children do not have a strong sense of self-protection. Following the reform and opening-up of China, the strengthening of democracy and legality has been remarkably successful, but nevertheless they are still in the process of continuous development and improvement. Although children's rights have been stipulated in specific laws, it will take quite some time for the children to completely understand their rights and learn to protect themselves. Moreover the joint efforts of all organizations and citizens are required to form an optimal situation in which society as a whole cares for the growth of its children;
- c) there should be supervision of the enforcement of laws protecting children's rights. At present there exist extensive rules and regulations for the protection of children, established by the municipal government and legislative bodies. However, some enterprises and individuals do not have a strong sense of legality and are not interested in protecting children. They even neglect children's rights for the purpose of profit. For instance, the pollutants given off by some factories close to schools exceed State-permitted standards; some products for children are of very low quality; some unlawful peddlers covertly sell unhealthy reading materials and audiovisual products to children, etc. To cope with these situations, strict supervisory methods

should be established and the relevant departments should strictly enforce them. Concomitantly, joint supervision by all the people should be encouraged.

## INDIA

*Rama Kant Rai*

South Asian Coalition on Child Servitude

### **The reality and challenges**

Child labour in India is increasing in magnitude. Official data from India indicates that the number of child labourers has increased from 10.7 million in 1971 to 18 million at present. Further, the official figures are underestimated, in view of the multiple concepts used to define child labour, the methods of estimation and sources of data, and the unorganized and unregulated nature of this sector of the economy.

The statistics on working children published by the Indian government, which estimates their number to be of the order of 18 million, have been criticised for covering only the urban areas. The Operational Research Group ORG, which estimates 44 million, has also been the subject of criticism for ignoring the millions of working children in the rural areas, agriculture and other occupations. It is thought that the children who work in rural areas do so not only in large numbers, but make up about 90% of the population of working children as a whole. It is not my intention to stick to any of these statistics, but rather to focus on the magnitude of inhuman greed and exploitation which are involved.

Our constitution has a wide range of provisions for the protection and provision of opportunities for children. Articles 15(3), 23, 24, 39(e), 39(f) and 45 in particular deal with the fundamental rights of children. The Child Labour System (Prohibition and Regulation) Act 1986 and the Bonded Labour System (Abolition) Act 1976 were formulated to provide much-needed assistance to exploited children. In addition, India is a signatory to the ILO Convention against Child Labour and against Forced Labour. However, all these constitutional and legislative mandates are being grossly and

criminally violated by greedy employers, while the government is seen to be colluding with them by not implementing the relevant provisions.

In the words of Justice P.N. Bhagwati, *Former Chief Justice of India*, in a historic judgment delivered in a writ petition filed by my organization in 1983, these children have no choice; they are driven by poverty and hunger into a life of bondage, a dark bottomless pit from which, in a cruel and exploitative society, they cannot hope to be rescued. Despite constitutional guarantees and legal provisions, more than 10 million children are in bonded servitude. They represent about 20% of the total number of children engaged in agricultural and non-agricultural work. Indeed, 55 million children in all have been deprived of education, health, development and liberty.

Bonded child labour is found predominantly in the agricultural sector, cattle tending, stone quarries, brick kilns, construction works, carpet industry, glass industry, match and fire works, handloom weaving, gem cutting and polishing, lock making and steel polishing. The situation of the children is compounded by restrictions on their freedom of movement, which makes it impossible for them to change employers.

In India there are two main categories of bonded child labour: hereditary bondage, where the children are born into bondage because of their parents' indebtedness and bondage, and bondage where the parents receive a small amount of money at the time of recruitment or where the child was kidnapped before being taken to an employer. Half of the 10 million bonded child labourers belong to the first category, and the rest to the second.

In some sectors where children are engaged, for example, in carpet making, leather works, glass works, street restaurants, domestic service, automobile workshops and small enterprises, they are likely to become bonded since they cannot change their jobs. They are compelled to remain on their work premises, which in some cases are far away from their native localities. This situation leads to brutal treatment, unjust punishment and a tremendous amount of mental torture.

The second category of bonded child labour is found mainly in

the agricultural sector, brick kilns, stone quarries, construction sites etc. It is in-built into the bonded labour system that if the head of the family borrows money from the employer/landlord, the entire family falls into the bondage trap. The women and small children of the family must work for the master as well, without any remuneration or in any independent capacity. The children become the greatest victims of this situation. For example, they are exposed to dangerous and hazardous explosives used for blasting large rocks. Severe injuries, fractures, and lung disorders etc., produced by the inhalation of dust, are common in stone mines all over the country. Even deaths are quite common. In brick kilns children are engaged mainly in carrying the hot-baked bricks from the kilns, as well as in leg pugging and moulding. Most of the children become bald, suffer from burns on the skull, and their limbs and fingers develop lifelong ailments.

In the agricultural sector children are exposed to pesticides and insecticides which lead to severe disorders of the nervous system, lungs, eyes and quite often to sudden death. Children who are engaged in cattle tending are beaten by their masters and sometimes attacked by the animals. It may also happen that the animals stray into the field of another owner, for which the children are again punished. The worst aspect of the situation is that these poor children can neither run away from their masters nor change their job.

In both these categories the element of bondage forces the children to work long hours, sometimes late into the night in dim light. It has also been found that they are kept half-fed on the assumption that if well fed, they will feel lazy and sleepy. Consequently they suffer from malnutrition. There is no time for these children to take a regular bath or clean their clothes, so that they develop skin diseases and other infectious conditions. Their prolonged unhealthy posture while working and the use of crude and outdated tools and implements unsuited to their young age produces bone deformation and damages the nervous system.

Another factor which compounds the health hazards of bonded children is the fact that they are required to live where they work. In the carpet industry, glass bangle industry, street restaurants and motor workshops, bonded children generally sleep, eat, drink and spend almost all of their time on the work premises, which are normally

dirty and unhygienic. Poor lighting, poor ventilation and the absence of minimum basic requirements for a working environment are the salient factors which contribute to making conditions hazardous.

Child labourers can be further classified as :

- a) migrant bonded child labourers;
- b) local wage-earning child labourers (allowed to visit their family every evening);
- c) family child labourers, who are deprived of schooling and work in the family craft/unit.

### **Limitations of legislation/government efforts**

- 1 According to the Bonded Labour System (Abolition) Act 1976, bonded labourers are those who are bound by loans/debts/advances/surety to an individual/group of persons/ concern to provide service voluntarily/with an element of force:
  - a) at wages less than the statutory minimum wages established by the government;
  - b) foregoing the freedom of employment/occupation;
  - c) foregoing the right to free movement throughout the territory of India;
  - d) foregoing the legitimate right to enjoy the product of their labours.

It is evident that the law is very clear; however, the bureaucrats always deny the existence of the bondage factor in child labour and present bonded child labour as ordinary child exploitation. This callous attitude of the State governments compelled the Supreme Court of India to comment, in a landmark judgment in 1983.

“ It is indeed a matter of regret that the State government should have insisted on a formal, rigid and legalistic approach in the matter of statute which is one of the most important measures for ensuring human dignity for

these unfortunate specimens of humanity who are exiles of civilisation and who are leading a life of abject misery and destitution. It would be cruel to insist that bonded labour, in order to derive the benefits of this social welfare legislation, should have to go through a formal process of trial with the normal procedure for recording evidence. That would be a totally futile process because it is obvious that the bonded labourer can never stand up to the rigidity and formalism of the legal process because of his poverty, illiteracy and social and economic backwardness and if such a procedure were required to be followed, the State government might as well obliterate this Act from the statute book."

The State authorities always insist that the matter of the advance of a loan must be demonstrated by the child labourer. This is extremely difficult, the Supreme Court says, and therefore whenever it is shown that a labourer is made to provide forced labour, the court would presume that he is required to do so in respect of an advance or other economic consideration received by him and that he is therefore a bonded labourer. This presumption may be refuted by the employer and also by the State government if it so chooses, but unless and until satisfactory material is produced for refuting this presumption, the court must proceed on the basis that the labourer is a bonded labourer entitled to the provisions of the Act. The State government cannot be permitted to repudiate its obligation to identify, release and rehabilitate bonded labourers on the plea that although the concerned labourers may be providing forced labour, the State government does not owe them any obligation unless and until they show, in an appropriate legal proceeding, conducted according to the rules of the system of justice, that they are bonded labourers.

- 2 The government's efforts to curb the system of child labour/servitude are nothing more than window-dressing. Despite such provisions as the Bonded Labour System (Abolition) Act 1976, the Child Labour Prohibition and Regulation Act, the Interstate Migrant Workmen's Conditions of Employment Act, the Contract Labour Act and the Bondage and



Factory Act, the child labour situation remains unchanged.

- 3 As a result of the pressure generated by the South Asian Coalition on Child Servitude (SACCS)/NGO campaigns and international pressure from the media, the government has now become concerned with the subject. The threat of the bill by US Senator Tom Harkin and pressure in the carpet industry have caused the government to show interest in registering the looms under the Factory Act and identifying the numbers of children working on the looms. Although this initiative was interrupted by political pressure, it represents a good beginning.
- 4 In 1986 the National Child Labour Project (NCLP) was launched and many welfare projects were sanctioned on a conventional basis. In areas where the child labour problem is acute, NCLP projects are running non-formal schools together with vocational training centres. These programmes represent a very soft intervention in the problem, as they deal only with children of local families.
- 5 During the past year more than 100 questions on the subject have been asked in our parliament, which has forced the government authorities to reflect on the matter. However, although it is gradually becoming a major issue, the government's approach is one of evasion, accompanied by an attempt to cause the entire movement to collapse by bureaucratising all the efforts of the voluntary organizations.

## INDIA

*Kavita K., Madhuri K., Alpa Vora*  
Youth for Unity and Voluntary Action (YUVA)

*"Every child comes with the message that  
God is not yet discouraged by man"*

These words of Rabindranath Tagore reflect the predominant feelings of Indians towards children - feelings of sympathy, protection and nurturing. India is probably the only country which celebrates a Children's Day (14 November - the birthday of India's first Prime Minister). Most welfare legislation in the country pertains to women and children. The government has also recently set up a separate Department of Women and Child Development. A major step in ensuring the protection of children's rights has been the ratification of the Convention on the Rights of the Child, although this has only been done conditionally. In addition to efforts by the State, we also find innumerable religious and charitable institutions engaged in the field of child welfare.

However, the social system that holds them sacred contains inner contradictions that deny children a childhood; as the following statistics reveal:

- 3.84 million children die before the age of five;
- 46.9 million children under five are malnourished;
- 75.4 million children are not enrolled in primary/secondary school<sup>3</sup>;

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3 *Human Development Report, 1992*

- 44 million children work as child labourers<sup>4</sup>.

Larger socio-economic and political forces combine to marginalise children and increase their vulnerability. Lopsided development plans with their stress on industrialisation, scant attention to rural development, and urbanisation, along with an unequal distribution of resources and the inability of a welfare State to provide basic resources or basic services for its citizens, have all led to a situation where children are forced to engage in a struggle for survival.

Recently adopted structural adjustment programmes are likely to further intensify this process. The severe cuts (ranging from 12% to 26%) in budgetary provisions for the public distribution system, poverty alleviation programmes, welfare education and health, will further marginalise people and lead to an expansion of the numbers living below the poverty line.

The thrust of policy towards industrialisation and the location of industries in major towns and cities has led to increasing migration, thus breaking the rural family structure, increasing child labour and adding to the numbers of street children. Policies that lay stress on big dams and reservation of forests for game sanctuaries, as well as drought and floods, also lead to a systematic displacement of people to cities and towns. Those affected are usually the "backward" castes (Dalits), minorities, denotified tribes, etc. More and more people swell the ranks of labouring urban dwellers; they are living on the fringes of urban society, denied basic amenities and services, birth certificates and the right to vote. Their very existence as well as the occupations they engage in for survival are considered illegal, thus forcibly making them "criminals."

The children of these families who grow up as second-class citizens, hardly ever enter schools. Good nutrition, health care and recreation are unknown to them. The marginalised urban family is so caught up in its struggle for survival that the psycho-emotional needs

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4 Operations Research Group, Baroda

of its children are not adequately met.

Indian society is today in a state of flux. The economic restructuring currently underway calls for a concomitant political and social restructuring. The increasing communalisation of society is proving to be a socio-political strategy to justify economic restructuring, as an analysis of the recent communal riots in Bombay would prove. In our experience, children from both the majority and the minority communities are growing up in an atmosphere of violence, hatred and fear. Having witnessed their homes being burnt and their near and dear being killed or injured, some have developed signs of mental illness and many have become orphans or have been rendered destitute. The children of minority communities are being discriminated against increasingly. Below we focus our attention on certain vulnerable groups.

### **Child labour**

Shiva Murugan, an eight-year-old bonded labourer, succumbed to the injuries he sustained while being beaten with cycle chains, iron rods, bricks, etc. by his employer. Shiva was just one of the 44 million child labourers in India.

Child labour is most widespread in the Sivakasi match and fireworks industry (40,000 to 50,000 children), the carpet industry in Mirzapur (50,000 to 60,000 children) and the gem polishing industry in Jaipur (15,000 children).<sup>5</sup>

The skills the children learn are simple, manual and routine and prove to be quite useless later on. Long working hours ensure that the child has no access to education or recreation. Poor working conditions adversely affect the child's health.

Child servitude goes unnoticed because it is supported by myths such as the need for children's nimble fingers to make certain products or the myth that it is part of the tradition of imparting skills

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5 *Children in Darkness*, Manjari Dingwaney, Rural Labour Cell, 1988.

from generation to generation. The fact that children are needed to work to support themselves and their families is a myth which justifies the existence of child labour, while in reality it is the economics of cheap labour and resultant vested interests that are responsible for this situation. Child labour also reflects the inadequacies of a welfare State which has not been able to provide employment for adults in the working age group.

### **Street children**

A study of six cities in India commissioned by UNICEF in 1992 estimated that there are as many as 414,700 street children, of which 60% work for more than the legally permitted five hours a day.

Street children are found concentrated in either seasonal jobs or in jobs that nobody else wants to do - waste recycling, sewage cleaning, or as helpers, caterers or shoeshine boys.

Street children are essentially homeless, without secure shelter or any regular source of food. They are regarded as the "scum" of society - dirty children who can easily be dispensed with. They are constantly harassed by police and railway authorities, who look upon street children as an easy way of making money.

The increased awareness within the government of the need to consider street children as a group that needs intervention has led to the formulation of a Central Scheme for street children, to be commissioned in the major cities in India.

### **Children of scheduled castes (Dalits), scheduled tribes, denotified and nomadic tribes.**

Certain groups in India have been subjected to centuries of deprivation as a result of social practices and beliefs such as the caste system, notions of purity and pollution and social stigmatisation. Though untouchability has been abolished by law, caste hatred and tension lead to caste atrocities against the scheduled castes (Dalits) even today. Certain tribes were classified as criminals during British rule in India. At Independence they came to be declassified but the

association with criminality remains. Lists of people belonging to such groups are available at police stations and the police regularly swoop down and pick up entire families whenever a crime is committed in the area.

The rate of illiteracy is higher among these groups, as is also their percentage of "below poverty line" population. Despite Reservation policies, children of such groups find it difficult to gain admission to formal school and even if they do, they must constantly fight the social prejudices and biases of teachers and classmates. Furthermore, the curriculum ignores their cultural tradition.

### **Refugee children**

Prior to the 1971 Indo-Pakistani war, seven million Bangladeshis fled from what was then East Pakistan to India, which accepted them as political refugees. The creation of Bangladesh led to their repatriation. However, many among them stayed behind because of the political and economic instability and natural calamities in Bangladesh. In the process they became illegal immigrants; they have no legal identity. Constantly forced to hide their existence, it is also not possible for them to organize nor is it possible to make an estimation of their numbers. They are incessantly subjected to night-time raids, are often sent back to Bangladesh, the adults are imprisoned and the children sent to remand homes. The fear, insecurity, instability, and separation from their parents all traumatise the children.

The inflow and outflow of the Chakma tribes across the border leads to a similar situation for their children.

### **Female children**

In a social system where male children are preferred because they perpetuate the family line and where the status of women is so low, the question of female children must be looked into.

Girls are treated as secondary beings from the moment of their conception - in fact they may not even be allowed to be born, as sex-

determination tests and the abortion of female foetuses show. The declining sex ratio (from 972 per 1,000 males in 1901 to 924 per 1,000 males in 1991) presents a grim picture. Higher infant mortality rates among female children, discrimination within the family with regard to nutrition and health care, as well as low access to education, are regarded as the norm for girls. The low female literacy rate (30%) shows how access to education for girls is very limited. While the enrolment of girls at the primary level has been increasing, the trend is not sustained at the middle or higher school levels, as reflected by the drop-out rates. The enrolment of girls is 41.7 % of the total enrolment in primary schools, 37.7% in middle school and only 32.5% in high schools.

Efforts have been made to check negative practices such as female foeticide, for example. The Maharashtra government has declared amniocentesis (sex determination tests) illegal. Education for girls up to the higher secondary (XII) level is free.

### **Child prostitution/sexual abuse**

Children, and especially girls, are often subjected to sexual abuse of various kinds. Girls are sexually abused within the family (by older males), in the community or in the workplace (such as girls working as domestic workers). The myth that sex with virgin girls cures venereal diseases leads to a high demand for such girls, who then come to be caught in prostitution. The tourist boom and the increasing number of bars and pubs is helping to further intensify this process. The Prevention of Immoral Trafficking in Persons Act (1986) seeks to stop the trafficking in women and girls and prescribes punishment for procurors and customers of minor girls.

### **Government efforts**

The government initiatives in the form of policies, schemes and statutory provisions indicate that there is a commitment towards, and concern about, child development.

## **Policy efforts**

The National Policy for Children (1974) promoted free and compulsory education for all children up to the age of 14, and alternative education where necessary; it provided for nutrition and health care, protection from neglect, cruelty and exploitation, and sought to prevent the engaging of children under 14 in hazardous or heavy work.

The National Policy on Child Labour provides, among other measures, for an extensive system of non-formal education and the intensification of employment and income-generating schemes for adults in areas with a high incidence of child labour.

The National Policy on Education (1985) focused on universal enrolment and the continuation of children in school up to the age of 14. Operation Blackboard sought to improve the infrastructural arrangements in schools. Non-formal education received an impetus.

## **Schemes**

The Integrated Child Development Services (ICDS) was initiated in 175 covering areas predominately inhabited by scheduled castes, in backward and drought-prone areas, nutritionally deficient regions and areas lacking social services. The scheme provides services in nutrition, health care, creches and preschool education to pregnant and nursing mothers and children under six. It covers a population of 18.3 million.

Mid-day meal programmes have been introduced for school-going children up to the age of six, but the programmes have served more as an incentive and have had little impact on the nutritional status of the children. Schemes for adolescent girls and children orphaned in riots represent other initiatives.

## **Laws relating to children**

The Juvenile Justice Act (1986) is a national act addressing itself to delinquent and neglected juveniles. The Act provides for



juvenile courts, separation of juveniles from adult offenders and provides for an institutional care system for their rehabilitation.

The functioning of these institutions leaves much to be desired. Although places such as the Observation Home are meant as temporary shelters, children are kept there for years on end while their cases are pending. The fact that it is a temporary place is also used to justify the non-existence of adequate education, vocational training or recreation facilities. Furthermore, the children are treated inhumanely, are often beaten, not given proper food etc.

There is a plethora of legislation pertaining to child labour covering the various sectors, plantations, factories etc. in which children are employed. The Child Labour (Prohibition and Regulation) Act 1986 gives a uniform framework for the regulation of work of children in certain employment, and prohibition of children in certain hazardous ones, such as carpet weaving, railways, ports, etc.

These initiatives have not fulfilled the aspirations with which they were started for several reasons.

The gap between the law and its procedures or the scheme and its delivery system has always been very wide. Very often these laws and schemes are not relevant in approach and various efforts remain piecemeal. Frequently, too, commitments made at the centre do not trickle down to the State or are inapplicable to State conditions.

Some of the measures have turned into populist programmes for gaining political mileage, as for example the Mid-Day Meal Programme. Most important of all, the measures lack any kind of inbuilt accountability to the public at large.

### **International efforts**

The interventions of the International Labour Organization (ILO) and UNICEF have been related to funding support, advocacy, lobbying for better policies, dissemination of educational material and promoting NGO networks and liaison with other groups working towards the realisation of children's rights. The ILO has recently provided support for 30 action projects covering 9,600 children under

its International Programme on the Elimination of Child Labour. Its advocacy efforts with the Ministry of Labour as well as its interventions in certain sectors of labour legislation pertaining to working children are noteworthy.

UNICEF has given priority to the issues of child survival and safe motherhood, child labour, female child literacy and AIDS. It generates educational and awareness material, contributes towards building an authentic database on the status of children through research, supports the training of personnel engaged in child welfare and promotes networks of NGOs working towards the realisation of the rights of the child. It also plays an active advocacy role. Both organizations operate through governments and prefer mediums of dialogue and persuasion.

### **YUVA's involvements**

Over the last eight years we have worked with street and pavement children, children of classified tribes, child labourers and children who have been victims of riots.

This work has taken place at various levels.

Education and awareness: the work has involved children, their parents, school-going children, the public and the police. These groups are reached through the medium of posters, street plays, seminars, press conferences addressed by children/eminent citizens, films, theme day celebrations on Independence Day, Children's Day, and community interaction programmes. The thrust has been towards building opinion against the practice of child labour, changing perceptions towards street children and sensitising the affected groups as well as promoting options for action or involvement.

Action/organization: this work has been directed towards obtaining birth certificates and ration cards, with school enrolment drives to establish the legal identity of the children. Efforts at building a mass organization of the street children themselves to rally on the issues they face have been successful; the group has actively taken up a shelter campaign and addressed the issue of police harassment.

The violation of children's rights by the State or individuals is

also taken up through fact- finding, mass action and public interest litigation.

Documentation/research/publications: this consists of the documentation of case studies, of our involvement in the work on the violation of children's rights, and of our on-going efforts with various authorities in the realisation of children's rights. In addition, studies are being conducted in order to build a data base and to gain an understanding of trends and the circumstances of the children.

We have also attempted to promote the creative expression of the children in a regular quarterly magazine, and by publishing their poems, paintings, etc.

Networking/campaigning: as part of the city-level network for street children, the Coordination Committee for Vulnerable Children, we have actively involved ourselves in the issues of health, juvenile justice and shelter for street children. This forum facilitates exchange of experiences and liaison with officials, and provides an entry point for policy changes.

The Campaign Against Child Labour, of which we are a coordinating agency, has involved 70 groups from ten States of India; it has taken the initiative in building awareness and opinion against child labour. The campaign is involved in producing education and awareness material in regional languages for wide distribution as well as through the mass media. It initiates dialogues with trade unions, the media, academics and political parties in order to broaden the responsibility for the eradication of child labour beyond the limits of the NGOs. Gross violations of working children's rights are also taken up.

We now feel the need to link up with groups in Asia and throughout the world for information exchange and solidarity support, particularly since the recent ratification of the Convention on the Rights of the Child has provided greater scope for the realisation of the rights of children.

Solidarity is expressed by participating in programmes and activities of other networks, such as SACCS (South Asian Coalition on Child Servitude), and the National NGO forum for Street and Working Children.

Lobbying/advocacy: involving the Department of Social Welfare, Women and Child Development, has been directed towards offering suggestions for their schemes and programmes. In addition, through direct case experiences, we have also initiated dialogue with NGOs, the juvenile justice system, the police, etc., aimed at offering recommendations for changes as well as initiating action against violations.

Promoting alternatives: direct efforts have been made to respond to the needs of the children by alternative experiments in non-formal education through pavement schools, a night shelter for street children, a savings bank for working children, a mobile health van, a community kitchen, etc. These are not provided as services; the involvement of the children in running these programmes is high and access to community kitchens and shelters is on a nominal subsidised basis. These initiatives are also seen as platforms for promoting secular ideals and non-gender-biased values.

As an NGO, we suffer the inherent limitation of small outreach. These efforts may be seen as micro experiments, and bringing about a macro impact remains a challenge.

## **NGO efforts**

NGO efforts aimed at assisting children have ranged from welfare measures to developmental ones.

The area of pre-school and non-formal education, institutional services for destitute, abandoned and orphaned children, as well as non-institutional services for sponsorship, foster care, creche and day care, have evolved on a wide scale.

Similarly the areas of child health, immunisation and nutrition have featured as priorities. In the last decade there has been a growing trend among NGOs to address children's issues from the children's rights perspective. Issues of child labour, street children, discrimination against female children, the state of child care institutions, etc., have taken precedence. Several NGOs are also redefining their role as advocates on behalf of children, acting as

watchdogs for children's rights and evolving various networks and campaigns to strengthen NGO efforts and voices.

## INDIA

*Kavita Ratna,*

Centre for Applied Research and Documentation  
The Concerned for Working Children

We in India have recently celebrated 46 years of independence. When we glance through the pages of history, we have to hang our heads in shame for having let our children down in every aspect of their precious childhood.

Protection of basic human rights has to be a primary obligation of every society. One of the sections of society which is not always aware of its rights and does not possess the resources to ensure the enforcement of those rights is children. Their special needs, vulnerability and, most importantly, their potential should compel us to address their issues with sensitivity, concern and conscience.

Available statistics about our children, however conservative, reflect the indifference and callousness with which we treat the future citizens of the country. Amidst the alarming and distressing facts and figures, what emerges is a dismal scenario.

According to UNICEF's *State of the World's Children Report*, 1990: "The problem of absolute poverty in the world still has its centre of gravity in South Asia. Approximately 40% of all young children who die in the world each year, 45% of the children who are malnourished, 35% of those who are not in school, and over 50% of those who live in absolute poverty are to be found in just three countries - India, Pakistan and Bangladesh."

There are multiple indicators for the status of the children in any country. A quick look at the statistics gives a clear picture of not only the children but also the social, economic and political situation they live in.

The high infant mortality rates in our country provide a sensitive index. An estimated 2.5 million infants (0 to 12 months old) and 1.5

million children (1 to 5 years old) die each year. Diarrhoeal diseases, respiratory diseases, tetanus and measles rank high as leading causes of child death. Prematurity, birth injuries and acute respiratory infections are estimated to contribute to more than half the infant deaths in the first month of life.<sup>6</sup> They still remain at levels that are unacceptably high.

Two major factors are known to contribute to the present poor state of child health. The first one is malnutrition and infections arising from unsanitary environments. Malnutrition, particularly of children, has been described as a disease of the poor. According to the National Nutrition Monitoring Bureau, an estimated 45 to 50 million children below five subsist on an extremely inadequate diet. The average deficit in the diet of a three-year-old child is reckoned at 350 calories daily, against a requirement of 1,250 calories for normal growth.

The second factor is that children have more than their share of several other diseases, widely prevalent or endemic in some pockets of the country. Information on morbidity patterns is scarce. All illnesses may not be fatal, yet they may seriously compromise the child's health and education. Several studies suggest that morbidity is higher among female than male children.<sup>7</sup>

There is another group of children whose number is significant but not easy to estimate and who need special education as well as sensitive and professional care. They are the physically or mentally handicapped, an estimated 12 million (National Sample Survey, 1981). According to this study, the number of children affected by locomotion disabilities is 5.43 million, visual disabilities 3.7 million, hearing disabilities 3.02 million and speech disabilities 1.75 million. The number of mentally retarded children is estimated to be not less than 2 million. The existing services for them are meagre and confined to urban areas. They reach only about 4% of the physically

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6 *Children and Women in India: A Situation Analysis*. UNICEF India Office, New Delhi, 1990

7 *ibid*

disabled and 0.2% of the mentally retarded.<sup>8</sup>

Gender bias is yet another indicator of the status of children. While in most societies more males than females die in infancy and childhood, in India the reverse is true. A comparison of the figures from the beginning of this century shows a decline which is very disturbing. According to the national census, while there were 972 females for every 1,000 males in 1901, there were 924 females for every 1,000 males in 1991!

Area-specific studies on gender bias have been carried out in a context of material poverty, but in our society social, economic, political and cultural practices and belief systems have greatly contributed to the oppressive discrimination against women.

The difference between the number of boys and girls attending school (1981) not only highlights the apathy towards the education of women, but also illustrates one of the implications of gender apartheid in the country: 56% of male children and 64.58% of female children are not even enrolled in primary schools.<sup>9</sup> Of those enrolled, it is estimated that 70% of children drop out of school between the ages of 6 to 14.<sup>10</sup> While one of the reasons for this dismal figure is the lack of access to educational facilities for most children, the irrelevance of the present educational system and the economic compulsions weighing heavily on children are even more important factors.

The non-formal system of education emerged as a response to the need of millions of children ignored by the formal system. Non-formal education could provide meaningful education to the majority of children of the country if its potential were creatively tapped, but it is yet to receive the recognition it deserves. One of the threatening problems which has grown into alarming proportions in the recent past is that of communal violence. By deliberately raking up

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8 *ibid*

9 *ibid*

10 *Encyclopedia of Social Sciences*, Vol.3, pp.412-424



meaningless prejudices we have created a manifold increase in the fear, danger and insecurity of children who are already harassed. Both, sudden outbursts of anger and systematically planned destruction take a toll on the physical, emotional and economic state of children that is beyond repair.

This milieu contains children who are deprived of even the basic necessities of life; they are robbed of opportunities for education and growth and their special needs go unheeded. As they belong to the economically weaker sections, most of them are forced to work for their survival. These working children are subjected to extreme economic exploitation along with all the other problems described above. They are brutally exploited, unprotected and vulnerable. With no opportunities for development, their very right to childhood is denied.

Often the terms 'child work' and 'child labour' are used interchangeably, but it is important to distinguish between them. The Encyclopedia of Social Science defines child labour as "a business of wage earning or of participation in self or family support taken up by the child which conflicts directly or indirectly with the business of growth and education." Child work is defined as "the work which does not conflict with the growth and development of the child." In a nutshell, child work "enables" whereas child labour "disables."<sup>11</sup>

The data available on the magnitude of the problem of child labour varies drastically from one source to another.

The National Census of 1981 put the number of child labourers at 13.6 million. The National Sample Survey of 1983 records 17.36 million. The non-governmental figures read much higher. The Operations Research Group of 1983 records 17.36 million. The Balai Data Bank 1985 puts it at 111 million. The Asian Labour Monitor has reported that for every three households in India, there is a working child. It adds that over 20% of the country's GNP is contributed by child labourers!

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11 *ibid*

As the governmental censuses do not include children working in the unorganized sectors which employ a maximum number of children, their statistics are far from representing reality. Based on a rationale evolved by us and confirmed by the extrapolation based on the data available from the Balai Data Bank, we believe that the number of working children in the country presently could be between 111 million and 115 million.

The majority of working children are to be found employed in agriculture and related occupations in villages and semi-urban areas. The others toil in cities and towns in sectors such as domestic and household services, hotels, construction, trade, small-scale industry, workshops, automobile repair, fuelling stations and cotton ginning as well as in traditional sectors such as carpet making, glass manufacturing, the slate industry, 'beedi making', carpentry, laundry, incense-stick production, match and firework production etc. There is virtually no sector in which a child is not employed.

For those children who are in the extremely hazardous occupations, life is indeed hell. Suffocating work areas which allow neither light nor air, cramped positions, the constant contact with poisonous and combustible materials, abuse - physical, mental and sexual, long working hours and a pittance for wages. All these together create the dehumanising environment in which the children struggle to survive each day.

Many of the children are migrants from the villages. They are the product of a collapsing rural economy. Our urban-oriented development has rendered the traditional occupations meaningless. Large-scale developmental projects have depleted natural resources to such an extent that the cycle of interdependence between nature and people has been broken. The people, unable to support themselves, are consequently forced to migrate to urban centres in search of a livelihood, but as their skills have no relevance to the urban job market, they are forced to resort to unskilled and unstable job options. The children are forced to take on the role of earning members to supplement the family income.

Poverty and adult unemployment are, no doubt, the apparent reasons for child labour. But an analysis of the factors which continuously contribute to creating and nurturing a society where

more than 60% of the population lives below the poverty line indicates the real culprit. The very model of development pursued by us stands guilty.

This model, which includes centralised power, unequal distribution of wealth, an irrelevant educational policy, fickle environmental policy, urban-centred planning and industrialisation, faulty budgetary allocations - coupled with a lack of political will to disturb the existing status quo - is responsible, not only for the existence of child labour, but also for all the problems of the various marginalised groups of the country.

For years now, the government has been both evasive and indifferent to the existence and situation of working children. True, from the constitution downwards, there are many Acts, such as the Factories Act, 1948, the Minimum Wages Act, 1948, the Shops and Establishment Act 1961, which cover child labour. However, not only do their defined age for 'child' vary, their provisions vary from State to State. The most unfortunate factor is that the implementation of all these Acts has been almost non-existent.

This created a situation where child labour which was banned in the organized sector continued to exist illegally and in the unorganized sector; continued de facto 'legally'. In both cases children were forced to work without any protection or employment benefits.

The Child Labour (Regulation and Prohibition) Act, 1986, for the first time legally acknowledged the existence of working children. Its approach to eradicate child labour was more realistic than the 'ban' approach previously used by the government. The Act remains unimplemented since the rules which are a prerequisite for it have not been formed. No initiative has been taken to draft a set of rules which could be discussed and modified by the State governments.

Recently, child labour appears to have acquired a position of high priority, judging by the number of press releases from the government regarding the issue. Needless to say both the mounting international pressure from importers of our products and our eagerness to earn foreign exchange have motivated this sudden concern. Furthermore the assurances which have followed from

representatives of the Government of India have little to offer as most of the provisions they speak of are either already present in the Act or totally unrealistic.

The attitude of the government to child labour as something inevitable is reflected in the conditional ratification of the Convention on the Rights of the Child by India after years of lobbying by several activist groups. The instrument of accession by India contains the following declaration:

“While fully subscribing to the objectives and purposes of the Convention, realising that certain of the rights of the child, namely those pertaining to the economic, social and cultural rights can only be progressively implemented in the developing countries, subject to the extent of available resources and within the framework of international cooperation; recognising that the child has to be protected from exploitation of all forms including economic exploitation; noting that for several reasons children of different ages do work in India; having prescribed minimum ages for employment in hazardous occupations and in certain other areas; having made regulatory provisions regarding hours and conditions of employment; and being aware that it is not practical immediately to prescribe minimum ages for admission to each and every area of employment in India - the Government of India undertakes to take measures to progressively implement the provisions of Article 32, particularly paragraph 2 (a), in accordance with its national legislation and relevant international instruments to which it is a State Party.”

This condition renders the ratification useless. The government moves on, as usual, blaming poverty for all the problems of the country, including child labour. Its welfare activities, as always, tend to superficially nurse the wounds rather than cure the causes. The miniscule funds allotted for children trickle through various levels of corruption and do precious little for the children.

In this situation the private development organizations (PDOs)<sup>12</sup> take on an important role. They have made their presence felt for more than a decade in the country. On the basis of the nature of their work and their interpretation of the term 'development', they can be classified into three groups.

The first group consists of those PDOs which function as an extension of the government. They try to supplement and complement the efforts of the government by providing welfare services without questioning the governmental framework. Their intervention has only limited and temporary implications for the problems of children. Since their resources are meagre compared to the magnitude of the problem, they are forced to restrict themselves to an area on a permanent basis. This charity approach encourages a situation where children are entirely dependent on the particular PDO and will become helpless in its absence, as they have not been empowered. These groups consciously or unconsciously reinforce the existing system.

The second group consists of the PDOs which also attempt to advocate for legislative amendments within the given structure of development. This approach has stronger implications than the former, yet fails to challenge the basic causes which perpetuate the exploitation of children. As the basic causes are not addressed, the problem recurs in one form or another.

The third group starts with an analysis of the social, economic and political situation. This group views problems such as child labour as the by-products of an unjust model of development. Consequently, while responding to the immediate needs of children, they also seek to argue, advocate for and contribute to a change in the model of development.

The Concerned for Working Children (CWC), to which I belong, is a group which has certain elements of all three, with definite emphasis on the elements of the third group.

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12 Also called non-governmental organizations (NGOs)

CWC grew out of the work of the Bangalore Labour Union. The Union began its work among unorganized sections of workers in 1978. One of the questions raised at the Union since inception was 'what to do with child labourers?' Because of the trade union background, it was almost instinctive to include children in the decision-making process, without being fully aware of the strong implications that this had.

It was then felt that immediate work was needed in the area of legislation - not that this was an end in itself, but that it could at least provide a framework in which the issue could be tackled. Thus, one of the first major tasks we undertook was to prepare a Draft Bill for Child Labour in 1985 with the children and submit it to the State and central governments. This was well received and the government set to work on an amended Act in 1986. However, the final Act was far removed from the draft bill. The recommended amendments were ignored. As mentioned earlier, the Act continues to be full of loopholes and remains unimplemented to this day.

This convinced us that purely legislative and welfare measures would bring little or no change in the basic situation that causes child labour in India. The primary aim of our work became the empowerment of child workers so that they might participate more effectively in the process of decision-making with regard to themselves, their communities and their country as a whole. They could then determine their own future and acquire the tools to intervene in the social, economic and political scenario effectively enough to be able to change it for the better.

We then started working with working children in Bangalore. Our field programmes form the foundation of all the work we do at CWC. They enable us to gain first-hand experience of the problem, to be innovative and try out new ideas, to facilitate the participation of the children themselves in the decision-making process and to set up viable, easily replicable models for work among child workers.

In the field programmes, CWC creates for working children time and space of their own where they are safe, can share, have fun, learn, love and be loved and care and be cared for so that they may be enriched mentally, physically and emotionally.

In the process, the self-image of the children is enhanced and their strengths and potentials are identified and nurtured. The children are enabled to access knowledge and information. They are equipped with tools of empowerment such as literacy and vocational training, as well as life skills, and an understanding of the political, economic and socio-cultural environment.

The children and their communities are also enabled to make better use of the existing resources and to generate additional resources. Some of the support services which are needed by the children and their communities are set up and managed with the children.

Children in difficult situations are supported to help them confront and deal with exploitation, oppression and atrocities. Female children and children with disabilities are given additional input which may be necessary for their empowerment.

Because of our staunch belief in the right of children to access information, we began exploring the possibilities of creating tools. What emerged after a series of discussions was the bright and strong Bhima Patrike. Bhima, our monthly wall magazine in Kannada for working children, was first published in October 1989. Written in simple and direct language and creatively illustrated, Bhima has become an integral part of the life of the children we work with. Its carefully planned layout and presentational tone always keeps in mind that the magazine does not talk down to children, but 'with' children.

Bhima has many important responsibilities. It carries information relevant to children; it helps children to interact and identify with each other; it gives due importance to their opinions and responses and provides a space for their self-expression. In doing all this, it empowers them to such an extent that they feel the need for more input and have the ability to access input from other sources as well. The contents of the magazine are chosen after careful thought. One of its components is the news items - regional, national and international.

The regular health column has achieved what days of medication could not do. It not only highlights the possibility of

prevention of disease even with the limited resources available, it also links concepts of good health in the context of the environment and work hazards.

Bhima also reserves a place for role models. These are children who, individually or in groups, achieve something worthwhile. An example of this is the reporting of children's responses to the demolition of the Babri Mosque in December 1992. The children felt the 'disputed land' could be best used to grow a forest. Most children wrote back about this item and expressed their anger and sorrow about the violence which followed after the incidents for the sake of an issue which is of no importance to the common people.

One of the favourite items of the magazine is the monthly story in the form of a cartoon strip. Stories from folk tales, history, mythology, parables, Aesop's tales are sketched by a renowned cartoonist. They generate discussion and are often enacted and shared with the other children and members of the communities.

Children eagerly await Bhima, read it or have it read to them, participate in discussions and arguments about its contents and send in their responses and other creative efforts. In this process, the love for and identification with Bhima has grown, so that they actively contribute to Bhima in the form of letters, drawings and accounts of memorable experiences.

Bhima provides a space for children to share their thoughts. It also serves as a link between urban and rural working children. There have been instances where letters from city children about the problems they have confronted after migration have been eye-openers to rural children planning to migrate. The children's initial unconditional acceptance of the wall magazine is gradually being replaced by active and intelligent criticism of its contents, including language, illustrations, layout, and even printing.

It is used not only by CWC's field projects but by a number of other organizations involved with working children. In addition, programmes like the Mahila Samakhya, a government programme for women's empowerment being implemented in three districts of Karnataka, are finding it a useful tool in their work with neoliterate women.



Because of the strong links it has forged between the children, it has proved to be a major motivator for the formation of Bhima Sanghas or collectives (see below), which are integral to CWC's field work.

"Right now the child has no platform and consequently no voice" writes Nandana Reddy in her paper, Empowerment - the Path to the Future. "The area of child protection is seen as an exclusively adult prerogative. The child is seen as vulnerable, dependent and immature. At the same time employment of children with or without safeguards is permitted and children do enter into written or oral contracts of employment all over the world. This contradiction is further highlighted by the fact that they are not allowed to open bank accounts or be members of unions or associations below the age of 18."

We recognise the need for a common platform for street and working children, as we have always believed in the child's right to be heard and to participate in decision-making processes, especially with issues related to him or her. The formation of such a platform is hampered by many factors. Many children who do not participate in any organized programme are not visible and therefore very little attention is paid to them by policy-makers.

Some children who are associated with such programmes are sometimes viewed as private property by the organizations concerned and do not have an independent common platform which they can look upon as their own and through which they can forge a common identity with other working and street children.

Networking has little meaning if the children, who constitute the affected group, cannot or do not network among themselves. No real change can be brought about by others, at least not on a permanent basis. The most we, as concerned activists, can do is to create space and time which allow and promote the empowerment of children themselves. One of our major attempts has therefore been to facilitate networking among and between working children. Bhima, the wall magazine, continues to be a major instrument in the creation of networking groups in the form of Bhima Sanghas (associations or unions).

The first Bhima Sangha was launched officially on 30 April 1990. That day is observed as Child Labour Day. At present there are more than 80 Bhima Sanghas in our field programmes and, further, children in touch with other PDOs have also set up Bhima Sanghas. Representatives from the Sanghas meet regularly to plan their activities and share experiences. The date of 30 April has now acquired recognition all over the country and child labourers and PDOs from different parts of India mark the day as 'Child Labour Day.'

In our urban programme we interact with about 5,000 children living on the street and in the slums. In the course of our work we have been able to identify a vast range of problems in a variety of sectors, including domestic service, garage work, parking lots, coolie work, the hotel industry, rag pickers, agarbathi (incense) work, beedi-making and construction work. We interact with more than a thousand of the children on a regular basis at our outreach and shelter programmes.

As most of the children we interacted with were migrants from the surrounding villages, we felt the need to start a rural programme. This was in response to the need to understand the circumstances which force children to seek work in the cities and to attack the problem at its root.

CWC's rural-based programme, Gramashrama, is situated in the South Kanara region, which has a very high incidence of child migration. Our attempt here is to clarify the causes of the rural urban migration of children and identify possible solutions which would slow down or stop the trend and perhaps, even reverse it to some extent.

Along with the direct interaction with children, the programme had to address larger issues very specific to the rural situation. As children here are very closely linked to their families and their communities, the problems of the adults had a direct bearing on the children.

As the collapse of rural occupations has been one of the most important causes of child migration, we felt an urgent need to start working with the artisans still active in those sectors, which include

weaving, pottery, farming, production of coir products, basket-weaving, jaggery-making and leather craft. Now the artisans have formed collectives through which they come together and address their issues on a common platform. According to the needs of the groups, CWC helps them to access input regarding availability of raw material, technology, design and marketing.

A vocational training programme for children run on the lines of an open university, Namma Shal' (Our School) is conducted. Master craftspersons from the region and academically trained professionals conduct the courses together. The vocations offered in the courses are need-based and also determined by the demands of the children. At present the courses offered are in appropriate construction technology, design and production of coir products and bio-intensive agriculture. About 200 children complete training every year.

A week ago the evaluation of the children completing their course in appropriate construction technology was conducted. The evaluators included professors in engineering colleges, the faculty of the Indian Institute of Architects and architects who have been using low-cost housing techniques. They were impressed with the children's grasp of the subject and, along with their certificates, have recommended the Indian Institute of Architects also to issue certificates to the children. This is one of the very few cases where a non-formal course has been recognised as being on a par with the formal course. The experience has taught us many lessons regarding the few other training programmes which have failed.

The programme covers 68 village communities. The specific target groups within these communities are child labourers, landless labourers, rural artisans and women. The special focus is indeed on the 5,000 children who interact with the programme, which is presently also working on the issue of political decentralisation in the villages where it is situated. With the combined force of all these efforts, we hope that the incidence of rural-urban child migration might gradually decrease.

In the course of the work of CWC, a need was felt for reliable data on child labour, access to work already done on the issue and resources to conduct research in areas so far neglected. There was also a need for a coordinated national effort to undertake research,

documentation and dissemination of information on child labour, as well as to conduct campaigns and implement a variety of action programmes to both highlight and creatively respond to the situation. In response to this need, the Centre for Applied Research and Documentation (CARD) was set up in December 1988.

CARD's documentation, research, communication and publication cells are involved in a number of activities aimed at generating and disseminating information on different aspects of the child labour issue. The continuous interaction between the field programmes and CARD strengthens the work of CWC. The inputs from CARD have also proved useful to other organizations and individuals concerned with the issue of child labour. CARD addresses working children, school children, organizations, institutions, government officials, policy makers and the media.

CARD's Documentation Cell has evolved in response to the widespread and strongly felt need to collect, assimilate and disseminate all the existing material on child labour and other related issues. It is now an operational data bank which is meant to serve as a valuable pool of information and experiences related to the child. The idea is to share and build upon the available material.

Research studies undertaken by the organization are designed to facilitate an understanding of the situation of working children in the context of national development and the country's political, economic and social history. Projects range from studies on specific sectors of industry in which child labour is prevalent, through reviews of government policies and work in this field, to analysis of policies and the work of the UN agencies and other international organizations in relation to the working child.

CARD's Communication Cell was established to disseminate the information generated by the research and documentation activities of CARD, to keep the issue of child labour alive in the media and public consciousness, to develop material to promote understanding of the issue among policy-makers and implementors as well as the public and, most importantly, to create communications media for the children themselves.

The Publication Cell brings out material which include research

reports, Bhima Sangha inquiry reports, handbooks, status reports, children's books, posters, audio-cassettes and films. These materials are being very effectively used by the activists and the others involved in child labour and related issues.

As we have established definite links between the issues of environment, economics, decentralisation, educational policy, alternative technology and marginalised people, we have found it crucial to network with groups and individuals working with all those issues. This networking has strengthened our perspective and our combined efforts contribute to tackling the issue holistically.

We are also involved in several advocacy initiatives at the regional, national and international levels. One of the most important initiatives has been the setting up of an International Working Group on Child Labour by the Defence for Children International (DCI) and the International Society for the Prevention of Child Abuse and Neglect (ISPCAN).

In the course of our work we have very often concluded that international agencies such as UNESCO and UNICEF have other important roles to play along with their present one of providing welfare facilities. Because of their position, they can be effective go-betweens and actually influence governments in the right direction. They could also be actively involved in supporting the efforts of local organizations which have proved effective.

A case in point is the experience of the programmes of the International Programme for Elimination of Child Labour (IPEC) in India and other parts of the world. These programmes initially chose projects which were only welfare-oriented and this fact has been largely responsible for the lack of any positive progress. IPEC seems to have recognised the drawbacks and is attempting to look at the problem holistically, involving both the PDOs and government agencies.

This involvement should be geared towards changes in the basic realities. As PDOs we are in no position to make structural changes. We can advocate and present arguments for such change; at best we can create micro-models. We can empower people we are working with to demand their rights. However, considering the magnitude of

the problem faced by the children, the government is the only agency which can mobilize adequate personnel and infrastructure. It is only the will which is lacking. The government has a definite responsibility towards each citizen and especially towards children. Any PDO with good intentions and zeal should not let the government shirk its duty. Ideally, a PDO should be a catalyst and a watchdog of society, and not a self-appointed substitute for the government in providing the basic amenities for the people.

While its welfare and protection schemes should actively encourage empowerment, the State should facilitate this process and explore alternative models of development. In the final analysis it is only the government which can bring about a change in the model of development itself, if it is willing to do so.

After 46 years of independence, we are once again at the threshold of major changes in our economic policy. With the onset of liberalisation, the small and traditional sectors have started to collapse even further. The poor are further marginalised and exploited. We are falling in the track of countries such as Brazil and the Philippines, and are moving further in the wrong direction.

At this point it has become all the more important for us to reassert our beliefs and to work with reinforced strength. As expressed by a few children from a school in Barbania in a letter to their teacher, "In Africa, in Asia, in Latin American, in the hills, in the fields, in the cities, millions of children are waiting to be made equal - they are the best of humanity."<sup>13</sup> As long as they remain waiting, our work must go on.

# INDONESIA

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## Introduction

In our approach to the situation and problems of Indonesian children, we have only recently come to realise that the universally accepted Convention on the Rights of the Child (CRC) provides in itself workable parameters which can be used both in addressing the situation of children and in evaluating achievements in child development.

The following part of this report will therefore try to briefly itemise some highlights of the situation of Indonesian children in accordance with the CRC articles.

## Situation of the children

### 1 Definitions

When Article 1 of the CRC is considered, according to the National Bureau of Statistics 1990 population census, there are 77,357,515 children (below 18 years of age) or around 43% of the total 179,247,783 Indonesian population. However, Article 1 of the CRC allows different definitions of childhood as recognised by national laws. In this regard, definition of childhood varies according to different civil rights, as follows:

- Marital law defines that adulthood starts from the age of 19 (female) and 21 (male), which implies that those below the age limits are recognised as children. There are 39,652,501 girls and 45,159,327 boys (total : 84,811,828 children) in this category.

- Electoral law recognises the age of 17 as the minimum age for the right to vote which implies recognition of childhood to those below 17. Similarly, criminal law (jurisprudence) is also in favour of this age limit and considers those below 17 as children entitled to special juvenile justice procedures. In this respect, we then have 73,535,952 children.
- National Education System law has recently increased the age for compulsory primary education from six to nine years. There are 69,881,162 children below 16 years of age under this law.
- The Labour Code (1951) explicitly prohibits children below 14 years to be actively involved in the labour force. Those considered as children by this law number 61,747, 978.

## 2 Discrimination

With reference to Article 2 of the Convention, despite a wide variety of ethnic, racial, religious and other socio-cultural groups throughout the archipelago, Indonesian children in general live in a non-discriminative environment. Successful efforts have been made by the government to realise this equality in nation building. However, there remains a problem in this regard. Children of ex-political detainees still suffer from a certain form of discrimination. An Act on "socio-political clearance" of the Ministry of Home-Affairs and "special screening procedures" of the security organs will effectively prevent anyone who has parental or family ties with ex-political detainees from gaining strategic positions in either public or private employment. Although this discrimination normally occurs later when the concerned children have grown into adults the policy does affect them much earlier. Undisclosed testimonies reveal that many children of ex-political detainees have developed a "mentality of hopelessness" and have given up on their educational possibilities as soon as they became aware of how limited their career opportunities would be. There must be hundreds of thousands of children belonging to this category.



### 3 Identity

Articles 7 and 8 of the CRC entitle the child to the rights to identity, nationality, and - when necessary - to the State's assistance and protection to re-establish his or her identity. In this respect, the street/homeless children are the most neglected ones as they do not have access to any family certificate (a family-based reference for official recognition of every citizen) and consequently neither to a residential card (ID), which is issued upon the production of the family certificate and is obligatory for citizens aged 17 years or more. Aside from the birth certificate, the family certificate and the ID are absolutely necessary for all formalities in Indonesia. Therefore, when a child loses his or her family ties and becomes a street/homeless child, he or she no longer has any links to official recognition. As a result, these children are practically deprived of public services. Certainly, they lose their opportunities for school attendance, face difficulties in getting married legally, and there has even been a case where it was difficult to find a cemetery willing to bury the dead body of a street child.

Despite the local practices to provide special protection and alternative care for children without a family (as recognized by Article 20), the street/homeless child is a relatively new and more complicated urban phenomenon which goes beyond the experiences of the established institutions to deal with. Moreover, there has been a noticeable increase in the numbers (figures unavailable) of street/homeless children in all Indonesian cities.

### 4 Child Abuse

With respect to Article 19, there has been an increase in the number of reports on child abuse which have taken place throughout the archipelago. These include physical abuse where some of the cases ended in the death of the victims, as well as mental and sexual abuse. A recent report revealed that every five hours there occurs one rape i.e. 1,500 to 2,000 cases annually whose victims include minors (Suara Merdeka, 12 July 1993). Abusers include not only the parents or guardians but also teachers. Some abuses have also been perpetrated by the police

as in the very recent 1993 case of Sei Lekan (a trans-migrant village in North Sumatra province) which was a notorious example of arbitrary arrests of children following the arrest of almost all families in the village after a protest riot.

## 5 Health Situation

Considering Article 24, the health issue of children has attracted massive attention from the government. Extensive campaigns on immunisation/vaccination, establishment of Posyandu (integrated service post) and other related policies have significantly reduced the nation's infant mortality rate. However, some basic health problems remain unsolved, such as a high rate of iron deficiency (one out of three Indonesian children suffers from anaemia) and the very high rate of vitamin A deficiency which affects around 50% of Indonesian infants below five. (Kompas , 10 January 1992) .

## 6 Education

With reference to Articles 28 and 29 of the Convention, Indonesian children by quantitative measures presently have much greater access to school enrolment, especially after the extensive establishment of primary school infrastructures during the 1970s which was followed by compulsory basic education as required by the National Education System Law. Unfortunately, there is still a high drop-out rate from primary and junior secondary schools besides the central issue regarding the aims and quality of education which remain unsolved.

## 7 Child Labour

Compared to other "sensitive" children's issues, the Article 32-related child labour issue is probably the most talked about area of concern. Many studies have been made on this subject by both governmental and non-governmental institutions. The official number of working children (between 10 and 14 years) is 2.4 million, but independent parties consider the figure as too conservative. In fact, the absolute number of child labourers has increased within the last decade. The per capita income, which is US\$ 480 to 500, points to the widespread existence of child labour based on economic need.

A threatening finding was once reported by Yaumil Agoes Achir *et. al.*, that working has a damaging impact upon children's mental and social capabilities. Her study (Problems of Children Working in Early Age: A study on Physical, Mental and Social Status, Jakarta, 1983) revealed that the average IQ of child workers was significantly lower than that of non-working children, and that there was a corresponding decrease in the working children's mental capacity in line with the increasing working period. Furthermore, it was also discovered that child workers had significantly lower social capabilities marked in verbal communication, inter-personal relationships, emotional responses, variety of interests and peer inter-relational abilities. Also discovered was the fact that working children were less self-reliant and had less initiative for work as compared to non-working children.

#### 8 Child Prostitution

Although sexual exploitation and child prostitution have been in existence for a longer period of time, yet they remain among the most hidden areas as far as Article 34 is concerned. A monitoring scheme recently conducted by a number of NGOs has, however, found an increasing tendency towards the sexual exploitation and prostitution of children. Moreover, a pilot study by McMenamin (February 1993) has indicated a growing tourist-related child sex exploitation.

#### 9 Children in Armed Conflict

With regard to Article 38 of the CRC, although there have been some major areas of armed conflict due to separatist movements (Aceh, West Papua, East Timor), the issue of children in armed conflict seems to have remained untouched.

### **Efforts to improve the child's rights situation**

#### 1 The government

The government has so far made some major efforts to combat problems, which serve basically to promote the child's rights provisions, particularly those related to Articles 23, 24, 27 and

28. A Child Welfare Law has also been enacted following ratification of the Convention. Moreover, the present world-wide campaigns against child labour have moved the government to put on more pressure against child employment in the industrial sector. However, further basic steps are yet to be taken since most of the laws covering the protection of children's rights lack the necessary implementing regulations which will make them more effective.

## 2 The NGOs

Non-governmental initiatives were traditionally provided by religious-affiliated organizations for the care of children without families, the Article 23-related programmes for handicapped children, and the Article 28-related provisions of educational facilities. Later on, a non-conventional approach was introduced by emerging children-concerned NGOs during the late 1970s which as to the present status has brought further achievements particularly in the Article 32-related area of child labour issues. Programmes on various sectors of child labour and the working street and market children have been carried out by different NGOs in various regions of the country. In the meantime, efforts are being taken in the area of child prostitution.

In particular, SAMIN as a support organization working mainly on children issues has, since its formal establishment in 1987, carried out extensive campaigns to promote children's development programmes and facilitated the formation and development of various action-groups mandatory by its objectives. Basic principles in children's development programmes were introduced during the campaigns, i.e. economically cheap/affordable, socially developed within the local existing institutions, culturally aimed at the development of authentic values instead of external imposed values, and politically open for local/community participation. Moreover, basic strategies should be derived from the children's authentic situation and problems at the local level. Identification and codification of the children's situation should then be done at the very initial stage of a programme provision, where comprehensive patterns of living over a 24-hour period should

be identified and details of key problems facing children should accordingly be codified. Combined methods of observations, interviews and thematic children's activities like diary-writing, drawing and role-playing are advisable at this stage.

### 3 The international organizations

The ILO through its IPEC Programme has been playing a significant role in the area of child labour in the country, through: provision of financial assistance to NGOs working on the child labour issue; encouragement of studies on the issue; contribution in the realisation of the Child Labour National Conference (June 1993) aimed at deriving practical recommendations to combat child labour problems and other campaigns.

UNICEF normally focuses its concern on the health problems of children (and mothers) in cooperation with the government. However, it has recently been involved in the child labour issue by providing funds for an on-going study on the issue. This was probably a result of its CEDC Programme.

### Closing remarks

Neither children's rights nor human rights education exist in any school curricula in Indonesia. However, some NGOs have realised the significance of such an education and have tried some implementative models to be carried on to a certain extent. A comprehensive module on children's rights/human rights education, therefore, urgently needs to be developed. SAMIN is preparing a monitoring and provisional scheme of the CRC, out of which a basic CRC education model is expected to be elaborated. In the meantime, a rough idea of democracy, environment, and gender-conscious education may be able to serve as the basis to develop the model. It is hoped that SAMIN will be able to take part in the activities of the UN and obtain assistance from international organizations such as the ICJ.

At present we have not yet participated in any activities of the UN nor were we involved in the drafting of the government's report submitted to the Committee on the Rights of the Child.

## JAPAN

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### General situation

It may seem that the rights of the child are highly respected and ensured in Japan. Indeed, many statistical indicators show that the infrastructure for human rights is very good. According to the UNICEF indicators, in 1991 the under-five mortality rate in Japan per 1,000 live births and the infant mortality rate were seven; nearly 90% of one-year-old children were fully immunised in 1990 to 1991; nearly 100% of children entered and graduated from primary schools in 1986 to 1990.

However, such indicators do not always reflect the real situation of Japanese children. There are many cases of human rights violations in school, at home and in other places. In school, corporal punishment occurs daily despite prohibition by law, and has sometimes led to severe injury and even to the death of pupils and students; various types of *ijime* (bullying) have given rise to many cases of suicide by children. Because of the inhuman treatment in school, nearly 1% of pupils and students have refused to go to school for the nine years of compulsory education. Reported cases of child abuse at home are increasing and are estimated at around 2,000 cases per year.

In addition, the situation of children in exceptionally difficult conditions is rarely reflected in official statistical indicators. Discrimination against those who are born and brought up in *buraku*, discriminated areas which were established around 300 years ago, and Koreans living in Japan has not been completely dispelled yet. Increasingly, children of foreign workers are not provided with adequate education and health care. Most disabled children are forced to go to institutions or special schools, and are thus not able to participate actively in their communities. The present juvenile system

of justice poses many problems for children who are in conflict with the law.

These problems are based on a low level of awareness of human rights in general; above all, in Japan, the child has not been seen as a subject of human rights; rather, he or she has been considered as a mere object to socialise and control.

## **The Convention on the Rights of the Child and Japan**

### **1 Ratification**

The Convention on the Rights of the Child has drawn much attention from those who are concerned with the situation of children, as an epoch-making international instrument which declares that the child is a subject of human rights. However, the government has not been willing to live up to expectations that the ratification of the Convention would contribute to the improvement of the situation of children.

Although Japan signed the Convention on 21 September 1990, just before the World Summit for Children was held in New York, it took about one and a half years for the government to submit the formal request for the Diet's approval of the ratification of the Convention. The government explains that this delay was due to the long consultation among the relevant ministries to find out whether there was a need to modify the laws in accordance with the Convention.

The government at last submitted the formal request to the 121st session of the Diet on 13 March 1992; however, the Diet's approval of the ratification was not given during that session because of the great controversy and confusion about the treatment of the Act with the Cooperation to the United Nations Peace Keeping Operations.

A year later the House of Representatives began a formal consideration of the Convention on 22 April 1993. The decision to approve the ratification was passed through the House of Representatives after a month, and consideration in the House of Councillors began.

It was believed that the Convention would be ratified by the middle of June; however the Diet was dissolved a day before the approval, after a no-confidence resolution in the Cabinet was passed because of the delaying of political reforms. (If a no-confidence resolution is passed in the Cabinet, the Cabinet has two options: the resignation of the Cabinet or the dissolution of the Diet).

Because of the dissolution of the Diet, the request for the approval of the Convention was automatically discarded. The principle of "children first" had been ignored once more. The new coalition government, born after the general election in July, must submit the request again.

We cannot tell, at the time of writing this paper, when the new request will be submitted to the Diet. Some believe that it will be submitted soon, perhaps at the next session, which will take place in the middle of September, but this is only a forecast. There is a possibility that ratification might be postponed until next year.

## 2 The government's attitude to the Convention

In addition to its unwillingness to ratify the Convention promptly, the government has been criticised for its reluctance to implement the provisions of the Convention in a positive manner. The new coalition government seems to be following the steps of the former one on this point.

Many individuals and groups involved in the children's rights advocacy movement, including academic circles and bar associations, have criticised this negative attitude. They have pointed out many problems relating to national laws and their application, e.g. discrimination against children born out of wedlock, lack of opportunities for students to be heard when they are disciplined, wide prevalence of corporal punishment at school and home, and the extremely low provision of legal assistance to accused children, etc.

Responding to these criticisms, the government has argued that the application of national law can be improved at the administrative level, but they are doubtful of its ability to



improve the situation of children in accordance with the Convention.

Furthermore, the government has been planning to make one reservation and two interpretative declarations upon ratification in order to minimise the impact of the Convention as much as possible. The reservation will concern the second sentence of Article 37, para.(c), which provides that "every child deprived of liberty shall be separated from adults." This planned reservation has been construed by lawyers and academics as an expression of the government's reluctance to abolish the *Daiyo-Kangoku*, the infamous police isolation cells used for interrogation by the police.

In addition to this reservation, the government has expressed its will to declare that:

- a the provision of paragraph 1 of Article 9 should not be applied to cases where a child is separated from his or her parents as a result of forced deportation based on the Immigration Law;
- b the wording of paragraph 1 of Article 10, which obliges States Parties to deal with applications by a child or his or her parents to enter or leave a State Party "in a positive, humane and expeditious manner," should not have an influence on the outcome of such applications.

Children's rights activists have interpreted and criticised this attitude as an expression of the government's reluctance to protect the rights of children of foreign workers and refugees.

### 3 National programmes of action

Japan prepared its National Programme of Action (NPA) to implement the goals of the World Summit for Children by the end of 1991, the date promised at the Summit. Japan was one of the first industrialised countries to prepare the NPA, which is worth praising. It also contains positive statements, such as a pledge to review the ODA budget and increase the share for human development (children and women in particular) and a promise to try to increase its contribution to UNICEF.

However, the existence and contents of the NPA are little known among the Japanese people, even among those who are concerned with the situation of children. There has been no governmental campaign to let it be widely known; mass media have paid little attention to it; NGOs have concentrated mainly on the Convention and treated the NPA lightly.

Under such conditions, the effective implementation of the NPA cannot be ensured. We would like to draw more attention to it as well as to the Convention.

## **Organizations working for children**

### **1 Coordination and cooperation among organizations**

In Japan there are many governmental, non-governmental and UN organizations working for children; however, their activities have not been well coordinated and cooperation among such organizations has been rather rare and short-lived.

Governmental organizations working for children can be divided into three groups: those in charge of education, such as the Ministry of Education and local boards of education; those in charge of health care and welfare, such as the Ministry of Health and Welfare, local public health offices and local child consultation centres; those in charge of juvenile justice, including prevention of juvenile delinquency, such as the National Police Agency, the Management and Coordination Agency (in charge of youth problems) and family courts.

Those three groups of organizations are working in the vertical system of bureaucracy with little coordination. There are no ministers or coordinating offices in charge of child-related problems in general. When the International Year of Women was declared in 1975, the government set up the Office for Promotion of Planning on Women's Problems, composed of under-secretaries of the relevant ministries; the chairperson was the Prime Minister. However, it has refused to establish a similar office on children's problems. At the same time, it has been reluctant to consult or cooperate with NGOs.

In contrast to the government's reluctance *vis-a-vis* the full and effective implementation of the Convention and the active promotion of the rights of the child, many NGOs have continued their own activities on children's rights.

In particular, the Children's Rights Committee of the Japan Federation of Bar Associations (CEC-JFBA), which is composed of all the lawyers in Japan, has taken a leading part. It has defended children's legal rights in court and Children's Rights Help-Line or Children's Rights Conselling Centers have been established at about 20 local bar associations. Other activities of CRC-JFBA include: holding public seminars on the rights of the child; advocacy through mass media, including comic books that are very popular among Japanese youth; investigations and studies on children's rights and juvenile law; publication of books on children's rights.

Many other organizations, such as the Network for the Convention on the Rights of the Child (NCRC) and the International Center for the Rights of the Child (ICRC), have also worked for the promotion of children's rights.

Although such NGOs often make contacts with each other, their activities are not well coordinated. There are no formal national coalitions of NGOs in Japan, as there are in some countries in Europe and most countries in Latin America, or regular meetings of such organizations.

In addition, there has been a gap - and lack of contact - between the groups which emphasise the domestic aspects of children's rights problems and those which focus on the international aspects, thus making it difficult for those working in this field to obtain an overall understanding of children's problems. However, the need for a comprehensive and global view of children's rights has been gradually recognised. NCRC and ICRC are planning to hold jointly a forum on the Convention on the Rights of the Child in November 1993, which will put an emphasis on enabling the two groups to meet each other.

## 2 Human rights education material for children

Though education against all kinds of discrimination has been

undertaken and promoted by some local governments and teachers' unions, human rights education material covering human rights in general has just started to be developed in Japan. One of the reasons for this state of backwardness is that human rights education has not occupied an important part in the Japanese school curriculum.

In this field, NGOs such as Amnesty International have played a significant role. Amnesty International in Japan has published a translation of a picture book on the Universal Declaration of Human Rights and has conducted unique "translation campaigns," encouraging the applicants to translate the Universal Declaration of Human Rights and the Convention on the Rights of the Child into daily language without using formal legal terms.

Regarding the Convention on the Rights of the Child, much material for informing children of its existence and contents has been published: posters, brochures, pamphlets, books, etc.

However, this material does not always reach children effectively; one local research study shows that only 14% of junior high school students know the name of the Convention and only 2% of these know its contents. Intensive efforts will be needed to "make the principles and provisions of the Convention widely known" (Article 42 of the Convention) to children.

### **Economic prosperity and children in Japan**

Japan has often been highly praised as one of the most astonishing phenomena after World War II, for becoming not only one of the most affluent and highly-industrialised countries in the world, but also one with a remarkably low crime rate. There appears to be no doubt that we have almost no social issues such as poverty problems, nor political disorders which must be solved by force. The Japanese people enjoy the lowest mortality rate in the world and in their daily lives use many goods manufactured with high industrial techniques, such as products by Toyota, Canon, Sony and so on. In this sense Japanese society might well be viewed as a country on "Cloud Nine."

In spite of this economic development and social stability, or rather because of and for the purpose of maintaining these economic developments and social stability, Japanese people in general, and children - who are most vulnerable to the social environment - in particular, have many special problems peculiar to Japanese society. In a word, all segments of society suffer from human degradation or human alienation phenomena caused by economic development.

The following are some of the concrete situations of Japanese children victimised by the present Japanese society, where economic prosperity and social stability are given the highest priority. I will deal mainly with the school environment because it reflects the current situation of children in Japan best.

### **Situation of children in the school environment**

The basic public education system in Japan consists of six years of elementary school, three years of junior high school, and three years of senior high school, followed by four years of university and college. The former two are compulsory, but almost 95% of students go to senior high school, and 35% of these continue further to universities and colleges.

The Japanese people are obsessed with education, which leads to cruel entrance examinations. The reasons are obvious. Everyone, perhaps even in kindergarden, knows that only graduates from prestigious universities can climb up the social ladder to success in reaching highly-ranked companies and positions in government. Children are thrown into severe and unending competition for better social position as early as in kindergarden, because all educational institutions are hierarchically ranked from top to bottom according to their prestige, which is defined by the number of students an institution can send to a 'better' or 'famous' higher educational institution or large company. Only children who have been well-trained to learn with almost inhuman perseverance and self-restraint can succeed in getting ahead. Thus, schools have now completely deteriorated into agents of selection and distribution of children to higher education or business communities on the basis of their performances in tests and the extent of their perseverance and self-

restraint. The ability to send children to an even slightly more prestigious school and university has become the supreme goal of the ordinary family.

From the governmental point of view, education has been considered as an instrument of the large companies and government to recruit promising youths who are talented but absolutely obedient to the status quo and social authority; the aim is to maintain and develop the current national purpose, which might be described as the furthering of economic prosperity, through the tight triangular adhesion relationship among the ruling elites in political, business and bureaucratic circles. In this sense education is also viewed as a means of preserving a rigid, pre-determined order in society.

In order to attain this purpose of the educational system, control mechanisms and administrative policies have been devised, such as the control of school teachers by orders from the top down, official censorship of all books used in schools, legally-binding guidelines of instruction for each grade, severe and meaningless school rules accompanied by corporal punishment, appointment of members of the board of education by the prefectural governor, secret school reports which are submitted to high school admission committees and so on, all of which contribute greatly to moulding the minds of children along the lines predetermined by Japan's socio-cultural structure, which sets economic development as the purpose and social obedience as the means.

In this way Japanese school children are completely controlled and forced to study day and night without being able to challenge or object to anything which might be irrational. They know that if they drop out of the school system, they will easily become part of the socially marginal rabble. The following are some examples which reflect the suffering of children which commonly prevails in Japan's educational system today.

## 1 School rules (*Kosoku*)

School rules usually regulate the time to come to and leave school, uniforms, hairstyles, book bags, underwear and personal effects. Some schools even force students to sit and walk in a particular way, and regulate when and where to talk with other students. The following are miserable but not exceptional examples:

- On the morning of 6 July 1990, a 14-year-old girl attending a junior high school in the Kobe prefecture tried to jump into the school grounds through the main gate at just 8:00 a.m., the time the students were to be on the school grounds, but unfortunately her head became wedged between the pole and the iron gate, which was slammed shut precisely on time by a teacher who was checking students' compliance with school rules. She died a few hours later in hospital. Not only did the principal warn students, "If you don't come to school on time, this can happen," but even the PTA (the Parent and Teachers' Association) commented later that the event could not be helped under the circumstances.
- Students' hair longer than the specified length will be forcibly cut by teachers.
- Students who wear clothing which is not in conformity with the rules, such as polka-dot or coloured panties or longer or coloured socks instead of standard ones, will be forced to stand or sit in front of the teachers' room for a long time (a period of seven hours is reported).

## 2 Corporal punishment (*Taibatsu*)

In Japan corporal punishment has been legally prohibited, but many cases are reported daily. Corporal punishment ranges from being forced to sit or stand for long periods of time to kicking, slapping, beating or clubbing. Some methods may lead to tragic events.

The following cases are just a few examples quoted from the paper by Karen Westgard, "*The Naishinsho: A Window onto Japan's Educational Legal Politics*," (unpublished, pp.10 to 11):

- A teacher in Nishinomiya forcibly inserted a hose connected to a propane gas outlet into the mouth of a student when he refused to reveal the names of other members in a "delinquent" students' group;
- Two 15-year-old boys were buried up to their chins in sand at a beach and were left there for about 30 minutes by seven teachers who accused them of involvement in a blackmailing incident at school;
- A fifth-grade home economics teacher and 38-year veteran of the Hyogo Prefecture school system practised unusually sadistic discipline. In sewing class, when students failed to use their marking pens correctly, the teacher pricked them in the abdomen until they bled. Parents finally protested and questioned the teacher about the practice. The woman explained that she wanted to teach the children "that the wrong use of marking pens would hurt;"
- In 1987, a 15-year-old boy, who had been physically abused by teachers at his former school, was sent to a private boarding school in the Chichibu District. Shortly after arrival he tried to escape from the school grounds. The principal collected a group of five students who were able to find him and bring him back by evening. The next morning, the gang had grown to 13 and, under the principal's orders, taught the distraught student a lesson. They pushed socks into his mouth, bound his hands and feet with vinyl tape, and beat him on the buttocks with a metal baseball bat for the next nine hours. The principal then confined him to a room on the second floor where he went into shock and died. Prosecutors requested a five-year prison sentence for the principal, but this was reduced because, according to the presiding judge, it had not been proven that the beatings had caused the child's death.

### 3 Bullying (*Ijime*)

One of the most troubling issues in the school environment in Japan is *Ijime* or bullying among students. Most of the reported cases consist of mental and/or physical harassment imposed



upon particular children merely because the victim is fat, slow, unclean, too smart, or a little different from his ordinary classmates. Methods of bullying range from forcing the victim to do things for others, to taking or hiding his or her belongings, leaving him or her out of games, ignoring or ostracising him or her completely, threatening and using the same violence as the corporal punishment meted out by teachers. Bullying often results in the victim's refusal to attend school, and even in suicide.

The following are quoted from the English version of *A Report on the Application and Practice in Japan of the International Convention of Civil and Political Rights by the Japan Federation of Bar Associations* (22 November 1991, pp. 221 to 22):

- In September 1985, a 14-year-old boy in Iwaki City, Fukushima Prefecture, committed suicide by hanging himself after suffering from harassment by his classmates. He had long been the subject of violence, had been pressured for money, and had even been forced to eat grass.
- In February 1986, a 13-year-old boy, H. Shikagawa, in Nakano Ward, Tokyo, committed suicide, leaving a letter saying that he had been driven into a hell. He had been beaten by his classmates and had been constantly ordered to do things for others. The teacher in charge of his class and his classmates had engaged in a "funeral game" in which they had pretended that he was dead.
- In November 1991, a 15-year-old girl, S. Mizumoto in Toyonaka City, Osaka Prefecture, died. She had been the subject of harassment for more than a year, and on a day in November she was punched and kicked by four boys and girls until she became unconscious. The arrested children confessed that they had been violent to her because she was sloppy and dirty. It seems that there are still many cases of this kind.

Another such occurrence took place in January of this year. A 14-year-old junior high school boy in Yamagata Prefecture, who

had been long harassed by classmates and other students, died in a storeroom for gym mats at the school gymnasium where more than 50 students were engaging in extracurricular activities. Seven students were sent to the Juvenile Court as suspects, but three of them, who were considered as principals, were dismissed because of lack of evidence and the remaining four are now awaiting hearing.

4 Secret school report (*Naishinsho*)

The junior high school is required to send a student's secret report to the high school admission committee; the report gives information on the student's academic performance, attendance record, health, behaviour and personality. In a secret school report there is a column where teachers are required to make special comments on the student. The contents of the school report are not disclosed to students and parents. Consequently, whatever unfair or biased remarks or comments are included, students or parents have no way of expressing their objections or asking for a correction. In one of the litigations in this context, a student was labelled as a "radical leftist" in his school report, which prevented him from entering high school.

As this case shows, junior high school teachers have life and death power over students in the same manner as the feudal lords did. This is why the above-mentioned terrible school rules, barbaric corporal punishment and inhuman bullying have been maintained without great objection or outcry from students and parents. They fear repercussions or revenge by teachers through the weapon of the secret school report. Students learn at an early age how important and valuable it is to be obedient to social authority and to comply with what social authority orders. Parents know that such extremes of oppression and violence in the school environment are unreasonable and irrational, but unless their own son or daughter is so seriously involved in events that they are forced to abandon the future of the child to the educational system, whatever happens in school is none of their business.

## Situation of children in other sectors

### 1 Juvenile justice system

Children who face the juvenile justice system encounter many problems; the following are some of the troubling issues:

- general attitudes towards juvenile delinquency are becoming tough. There have been some cases of deviation by the relevant government agencies from the fundamental principles set by the Juvenile Delinquency Law in terms of the standard (sound development, social order and security) behaviour calling for intervention (three categories of delinquency set by law, as well as bad behaviour), the appropriate authority (Family Court and police) and dispositions (protective, punitive and preventive measures);
- children are investigated in the notorious *Daiyo-Kangoku* (police isolation cells) in the same way as adults, where they are submitted to inhuman treatment to elicit confessions. The presence of a lawyer or other person is not required during the investigation. Even interviews with attorneys are strictly limited during the period held in the *Daiyo-Kangoku*. Investigations at the *Daiyo-Kangoku* are considered to result in a considerable number of false charges;
- a juvenile person can appoint a representative for defence, but his attendance is not mandatory. Only 0.6% of ordinary cases are accompanied by attorneys;
- the procedural rules of the inquiries are not provided in any detail. Procedural due process is completely out of court, so that the presiding judge has great discretionary power over the course of the proceedings;
- the right to appeal an order is strictly limited and the right to retrial is not guaranteed.

### 2 "Borstal" institutions

The treatment of children deprived of liberty in Japan deviates greatly from the standards set by UN documents, especially the Rules of Protection of Juveniles Deprived of their Liberty. The following issues must be discussed.

- The standard or principle according to which children should be deprived of their liberty is not necessarily made clear in Japan, especially in terms of pre-trial detention, which is used too often at present. The "last resort" principle must be embodied in the Japanese system.
- The Japanese reformatory is fundamentally considered to be a "closed institution"; the dormitory is usually equipped with iron-barred windows and is locked. Access to the outer world is strictly limited. Integration into the local community does not exist as yet.
- The right to personal effects is severely restricted, and the right to wear one's own clothes or the right to privacy is not acknowledged. Even the possession of the legal codes and statutes is prohibited. Institutional rules are terribly strict and totalitarian. Children are almost completely controlled day and night.
- The institutional decision-making process is not articulated at all. Even the disciplinary proceedings are so informal that no due process rights are guaranteed. No ombudsman nor any surveillance system from the outer world has been established.

### 3 Handicapped children

Disabled children face great discrimination in Japanese society. On one hand they must confront the prejudice which prevails among people in general and on the other hand they are formally segregated from pupils who have no disability. Disabled children who have been defined as such unilaterally by the educational administrative authority are forced to attend nursing schools, where they are deprived of any opportunity to associate with other children with no disabilities.

## Conclusion

Looking back upon the past, we Japanese made great mistakes, invaded neighbouring countries with armed force, provoked World War II, and destroyed miserably and barbarously much life, liberty and property on earth. This fact must be our starting point when we think about the protection and development of children. We Japanese should reflect more deeply on these past activities, present an apology from the bottom of our hearts and take on responsibility for what we did, including compensation. We should always keep in mind that we must respect the dignity, life and all human rights of every individual in the world, and that we should not ignore any of these human values under the pretext of economic prosperity, social stability, or even world peace. Many UN documents, including the International Covenant on Civil and Political Rights (ICCPR) and the Second Optional Protocol to the ICCPR, have declared this repeatedly and for children we now have the Convention on the Rights of the Child, as well as the related Rules and Guidelines.

We will make our best efforts to ensure and guarantee children all over the world a natural and social environment filled with love and complying with the UN documents which declare the universal principles of mankind. We believe firmly that only the child whose own human rights are respected can be a really free adult and can unite with others internationally to attain real world peace.

## Republic of Korea

*Dong Eun Park*  
UNICEF, Korea Office

### Situation of children in Korea

#### 1 Children's situation

Largely due to the successful family planning campaigns from the 1960s to the 1980s, Korean parents have followed the trend of having one or two children only. The population of children aged below 18 was 15,621,000 in 1980, which was 41% of the total population. In 1990, however, the population of children decreased to 13,677,000, which was 32% of the total population of 43 million.

Total population	44,300,000 (1993)
Population under 18	13,677,000 (1990)
Population growth rate	0.96% (1990)
Average birth rate	1.7 per woman (1991)
Child mortality rate	10 per 1,000 (1993)
Children vaccinated	96%
Primary school enrolment ratio (%)	108
Infant deaths from diarrhoea	4.4 per 100,000

Since Korea has achieved a high degree of economic development, most of the needs of children are met; some concerns which remain in the 1990s relate to abandoned children, missing children, children of unmarried mothers, children of child-headed families, handicapped children and run-away children.

#### 2 Legal protection for children: laws and regulations

Legal protection for children is designed to improve their welfare within the context of the family. The social security system based upon legal protection for the family started with the Public Officers Pension Law (1961); related laws followed, such as the Prevention of Prostitution Law (1961), the Medical Insurance Law (1963), the Industrial Disaster Compensation Insurance Law (1963) and others.

Laws concerning child welfare are the Child Welfare Law (1961), the Livelihood Protection Law (1971), the Juvenile Law (1958), the Relief and Rehabilitation Law (1961), the School Education Law (1967), the Labour Standards Law (1953), the Mother and Child Health Law (1973), the Exceptional Law for Adoption (1976), the Social Welfare Law (1970), the Juvenile Reformatory Law (1977), the Medical Protection and the Pre-school Education Promotion Law (1982).

In addition, the Children's Charter which was passed in 1957 and was amended in 1988 is regarded as a promise from society and adults to protect their children.

To a certain extent, existing child welfare laws are sufficient for legal protection. However, problems occur in terms of procedures in implementation which often lead to gaps in legal protection.

Further, the laws with respect to government financial support are mostly voluntary. This means funds are made available as the national budget allows. Another deficiency is that the laws, in the process of implementation, seem to be more interested in the parents or adults, with only little room for children to decide their own interests. For example, in divorce cases, the child follows his father or mother without being asked for his or her own consent.

## **Problems faced by children in Korea**

### **1 Abandoned children and adoption**

The number of children abandoned by their parents or other relatives had decreased to approximately 3,000 in 1990. Orphans

are either placed in residential child care institutions or placed for adoption. A 1990 study reported that 6.7% of the total child population in residential child care institutions were orphans.

In terms of adoption, foreign adoption was predominant until 1985. However, the number of foreign adoptions began to decrease in 1986. Recent government policy puts an end to foreign adoption after 1996. In 1988, a total of 8,787 needy children were adopted (6,463 overseas and 2,324 in-country). In 1991, only 3,438 children were adopted (2,197 overseas and 1,241 in-country).

## 2 Children in institutions and child-headed families

Korea has experienced rapid industrialisation and urbanisation during recent decades. Family disorganization due to decreased family function and confusion in family roles is on the increase. Another type of needy child has come into view. These are children under 18 years of age who are without parents or responsible adults living with them. They are called child-headed families.

In December 1992, there were 13,392 children in 7,899 child-headed families. The government supports their living, education, fuel, clothing, medical expenses, etc.

In 1992, there were 27,649 children in 359 child-care institutions:

1,124 babies in 26 infant homes;

16,372 children in 218 children's homes;

236 children in 3 vocational training centres;

357 children in 4 correctional care projects;

7,276 handicapped children in 69 children's homes for the handicapped;

1,858 needy children in 34 mother-child projects;

427 children in 5 projects for juvenile vagrants.

Most of the welfare projects are operated by non-governmental



organizations. The national and local governments give financial support, involving subsidies which cover from 80 to 90% of the total budget for the projects.

### 3 Child abuse and neglect

In general, programmes and activities for the prevention, identification and treatment of child abuse and neglect are at the beginning stage. In our custom and culture, most parents believe the old saying: "spare the rod and spoil the child," and most people would tolerate corporal punishment and discipline. Therefore, child abuse and neglect seems not to be recognised as a social problem. It is often seen as a family concern.

In 1979, the Korea National Council on Social Welfare opened a Child Abuse Reporting Center in Seoul. However, the centre was closed one year later because few cases were reported. In 1985, the Seoul City Child Guidance Clinic opened the Center for the Protection of Children's Rights; however, only 96 cases of child abuse and neglect were reported in the following five years.

While the reporting of cases of child abuse may be low, researches show there is a high incidence. A 1987 study by Professor Kwang II Kim reported 58% of the children in 22 classes (3rd and 4th grades of primary schools in Seoul) were mildly battered and 8.2% were severely battered.

A study in 1992 by Bae Keun Yi, a nation-wide research organization (by random sampling involving 170 primary school children and their 168 parents who live in 17 cities, including provincial capital cities) reported that 86.9% of the children were battered. The reasons parents gave for battering their children were: disobedience (41.1%), sibling quarrels (21.4%) and neglecting their school tasks (14.3%).

In 1989, motivated by the social atmosphere that child abuse and neglect must be recognised as a social issue, the Korean Association for the Prevention of Child Abuse and Neglect (KAPCAN) was established by professionals. As of August 1993, KAPCAN operates 16 Reporting Centers and 9 Regional Associations on a national scale.

## **Goals and activities of the government aimed at combating the problems**

The main goal of the government child welfare policy is to provide a good environment for children within their families so that they can grow up physically, emotionally and socially healthy. Korean family welfare policy aims at improving family functioning and maintaining the traditional way of life within the family, such as respect for the elderly. Child welfare policy also aims at encouraging family functioning so that children have concern and love for their parents. Society provides social supports for children. The government assists needy children through monthly subsidies, which include school fees, medical aid, clothing, fuel, etc.

## **Activities of NGOs aimed at combating the problems**

In Korea there are 329 non-profit organizations assisting needy children. The most important role of the NGOs is their provision of sponsorship programmes for needy children. These programmes include not only financial support, but also emotional support, such as a home-maker service. One of the leading NGOs, the Korea Children's Foundation, had 71,000 sponsors for 51,511 children as of August 1993.

The Korean Association for the Prevention of Child Abuse and Neglect, the National Council for the Development of Child and Youth, and the Child Finding Center for Missing Children are important NGOs, providing programmes that respond to the needs of children in difficult circumstances.

## **Coordination of activities among organizations**

The National Council on Social Welfare, the Korean Association of Child Welfare Institutions, the Korea Children's Foundation, World Vision, and the Korean Association for the Prevention of Child Abuse and Neglect are leading organizations on

child welfare with nationwide coverage. In response to the various issues relating to children, the above-mentioned NGOs cooperate with one another.

### **UNICEF Korea activities to assist children**

UNICEF initiated the establishment of the Korean Association for the Prevention of Child Abuse and Neglect in 1989 and assisted the Association in organizing nine regional branches and establishing 16 local reporting centres.

In 1991 UNICEF Korea supported a nationwide study by the Child Finding Center to determine the real situation of missing children.

In 1992 UNICEF Korea initiated the establishment of the National Council for the Development of Child and Youth to coordinate the responses of NGOs on important children's concerns, particularly the monitoring of the Convention on the Rights of the Child and implementation of the National Programme of Action (World Summit for Children Declaration).

### **UNICEF activities relating to the rights of the child (CRC)**

The Korean government ratified the Convention on the Rights of the Child in November 1991. It is now preparing the report on the CRC, to be submitted to the International Committee on Children's Rights before the end of 1993.

UNICEF Korea is assisting in the preparation of Korea's Report in various ways. Recently UNICEF Korea conducted a CRC workshop involving government ministries and representatives of major child-related NGOs. The workshop aimed to: (a) emphasise the importance of the CRC for Korean children; (b) assist the government in integrating the views of NGOs on the monitoring of the CRC and in reporting to the international CRC committee in November; and (c) reaffirm the cooperation between government and NGOs for the benefit of children.

As an input to the report on the CRC, UNICEF is assisting with a study on the view of NGO representatives on their respective involvement in the implementation of the CRC.

## MALAYSIA

*Aneeta Kulasegaran*

National Task Force for Working Children (CHILD)

Children are born, poets say, trailing clouds of glory. Theirs is a sheltered and blameless time, a sweet parenthesis between birth and responsibility. The young are expected to play, to learn, to feel life in every limb! They certainly are not supposed to run away from home, be abused, work or go into prostitution, kill or be killed. But, sadly, this is exactly what happens in our world today.

For Malaysia, on the outside, things look good. Our Prime Minister has given the people a vision for the year 2020: to be a newly developed nation, and our country is certainly well on its way. Industry and commerce are booming and the lives of Malaysians have improved remarkably.

But at what expense? The New Economic Policy (NEP) which has been in existence for 20 years, since 1970, has brought many educational and economic opportunities to those who might have never reached those heights without it. The NEP has initiated the setting-up of numerous government agencies to help the rural population but, sadly, there are still those living on plantations owned by private land-owners who have not reaped any of these benefits.

### **Definition of a child**

Childhood can be defined in terms of age, but different societies may have different age thresholds for demarcating childhood and adulthood. In Malaysia, under the Guardianship of Infants Act, 1961, an "infant" means a person who has not attained his majority. Under the Age of Majority Act, 1971, the age of majority is 18. The Convention on the Rights of the Child adopted by the General Assembly of the United Nations in 1989 defines a child as any person under 18 year of age. More importantly, the Child Protection Act, 1991, passed to protect children from abuse, encompasses all persons

under 18 years as well.

Yet, despite the national and international standards that have been set, a "child" under the Children and Young Persons Employment Act, 1966, is defined as a person who has not completed his 14th year of age, i.e. all those 14 years old and below. It is ironical that the Act states no minimum age, only a maximum age of 14 years. The Act is the only piece of legislation that governs employment of children in Malaysia. Considering that it was enacted in 1966, it is out-dated and unusable for Malaysian children of the 1990s. For the purposes of my paper, I shall define as a child all those who have not completed their 16th year of age.

### **Problems faced by Malaysian children**

The stress and pressures of modern living are showing signs of taking their toll on the Malaysian families of today.

#### **1 "Missing Girls" campaign**

In urban areas, high expectations of academic excellence have made children lose self-esteem and given rise to unhappy family homes. Malaysian victims aged 15 to 18 have even been found in red-light districts as far as Hong Kong; the local Chinese political group, the Malaysian Chinese Association, publishes photographs of missing girls in a national daily in an effort to reconcile these runaways with their families.

The government is also planning to set up three houses for runaways in three different "popular" spots in Kuala Lumpur. This is to prevent runaways from being taken into police stations when caught, as they are not criminals and have to be treated with care.

#### **2 Drug-related activities**

Several years ago, our government made a concerted effort to wipe out the "dadah menace." There are now several rehabilitation centres and there is no longer a strong stigma on being an ex-dependant. The private sector has been encouraged to employ ex-addicts who have given up the habit.

A related problem is what we call "budaya lepak". It generally means loitering about shopping complexes, amusement arcades and other "undesirable" public places. Since education is not compulsory in Malaysia, teenagers are often found absent from school. The government is planning programmes to reintegrate these teenagers and make them more disciplined.

### 3 Child abuse

In 1990, a two-year old baby was abused by his minder's husband. The baby died of multiple injuries and a smashed skull; he had also been sodomised. This became known as the worst incident of child abuse in Malaysian history. Other horror stories emerged via wide media coverage. As a result of a wave of public outrage, the Child Protection Act, 1991 (as of March 1992), was quickly passed. It is a far-sighted piece of legislation, as it empowers the police, welfare bodies, medical officers and hospitals to cooperate in order to deal with child abuse cases more effectively. Indeed, section 19 of the Act makes it mandatory for a Medical Officer to notify a Protector if there are reasonable grounds to believe that a child is being abused. He or she may be liable to pay a fine for not complying with this rule.

The causes of child abuse, whether emotional, physical or mental, are multiple: the stress of modern day living, mental problems or even traditional beliefs. For instance, Chinese children were abused because their parents believed that those born under certain signs of the zodiac would bring bad luck to the family or were incompatible with other family members. Counselling sessions are provided for abusers but, sadly, many drop out after a few sessions.

The Society for Child Abuse and Neglect based at the General Hospital in Kuala Lumpur has obtained the following findings for children who were treated at the hospital in 1992:

<b>Table 1</b>	<b>No. of cases</b>
Physical	72
Sexual abuse	31
Emotional neglect	3
Physical neglect	16
Abandonment	19
Babies of drug-addicted mothers	12
Runaways	9
Street children	5
Child labourers	2
<b>Total</b>	<b>169</b>

The above findings are by no means nation-wide statistics but give one a fair idea of the problems faced by children.

#### 4 Child labour

In Malaysia, the last complete nation-wide survey was undertaken in 1980. Results showed that there were 73,475 child workers between the ages of 10 and 14. Comprehensive statistics may be found in a book entitled *Child Labour in Malaysia* by Jomo K.S. In his ethnic analysis, out of all working 10 to 14 years olds, 46.9% are Malays, 40.9% are Chinese, 11.9% Indians and 0.8% are of other races. Numerically there were 33,423 Malay children, 29,287 Chinese and 8,541 Indian children who were full-time workers in 1980. These statistics are important because they show that we are dealing with a problem that is prevalent in Malaysian society as a whole, regardless of race, colour or creed. No comprehensive nation-wide survey has been undertaken for more than a decade now.

At a seminar organized by CHILD early this year, the Ministry of Human Resources and Labour promised to undertake such a survey and this promise was reported in the press, but, no details have come forth to date.



Where can these working children be found? In 1980, 48,835 could be found in agriculture, forestry and the fishing industries; 6,606 children were in wholesale and retail trade, hotels and restaurants; 6,098 children were in manufacturing and 11,641 children in other industries. The last category includes domestic servants who earn wages and unpaid child workers working for their families.

A recent study undertaken by CHILD in the many plantations around the State of Selangor in November and December 1992 showed that out of the 110 children interviewed, 75% were full-time workers and the other 25% worked after school. One quarter of the child workers interviewed began work at the age of 13 and 30% started working when they were less than ten years old. Most of their parents were rubber tappers, unskilled workers, oil palm harvesters or factory workers, and obviously did not appreciate the benefits of education for their children. The details are shown below.

**Table II: Summary of the survey from 21 plantations in Selangor**

	<b>Full-time</b>	<b>Part-time</b>	<b>Total</b>
No. of children	82	28	110
No. of males	48	18	66
No. of females	34	10	44

**Table III: Reasons for children working**

<b>Reasons given</b>	<b>Affirmative response (%)</b>
Very large family size (average 7 members)	47.1
Alcoholic parent	28.6
Disabled/ill parent	17.1
Orphans	4.3
Aged parents	2.9
<b>Total</b>	<b>100</b>

The average monthly income for the families of these children was around RM 600.00 for an average family of seven members. Many children said they left school because they could not perform well, although the majority worked because of the force of circumstances. There were also a number of children raised in urban areas; these could be found in restaurants and night-markets and as street beggars.

The definition of "young person" under the Child and Young Persons Employment Act, 1966 is anyone between 15 and 16 years of age. A young person may be engaged in all types of employment, including non-family undertakings, eg. as a domestic servant, employment in an office, shop (including hotels, bars, restaurants, stalls) godowns, factories, workshops, clubs or associations. This also includes industrial undertakings "suitable to his capacity" and on any vessel, ie. ship or boat, under the 'personal charge' of his parent or guardian. The Act also provides that any 15 or 16-year old girls may be employed in hotels, bars, restaurants and clubs if they are under the management of her parents or guardian. The Director-General of Labour has to give his approval for such employment if the establishment is a non-family undertaking.

Young persons are allowed to work longer hours than a child (section 6 of the 1996 Act). They are permitted to commence work at 6 am. There is even a provision in the Act to further relax this if they are working in an agricultural undertaking or in public entertainment. Young persons can work for four hours continuously, up to seven hours a day, or eight hours including school hours, leaving only 12 hours free.

Children and young persons are not permitted to work for more than six days consecutively. This is in total contrast with adults, who can only work five or five and a half days!

Needless to say, the above statutory provisions are unsuitable for children and young persons 16 years old or less. Instead of protecting them, the provisions clearly state that those under 16 can work in virtually any place where adults are found, for even longer hours!

Naturally any law is ineffective if not enforced properly. Under

Section 2.9 of the Act, the Director-General of Labour and his officers "shall be charged with the responsibility" of carrying out the provisions of the Act. This is a powerful section. It not only invokes a moral obligation but a legal responsibility enshrined in a statute for the enforcement of the Act, but unfortunately even the most minimum of standards in the Act are not strictly enforced.

Labour offices, of which there are only a few, refuse to check on family-run establishments even though these establishments can be penalised if they do not conform to the stipulated working and rest hours. The authorities make numerous excuses when asked to investigate areas in remote locations at non-working hours. There are various other excuses for non-enforcement, such as communication problems with the child, difficulty in establishing its age, or unwillingness to testify against employers.

### **Role of NGOs**

There are several NGOs working unremittingly on the above major child issues. One of these is SCAN, based at the main hospital in Kuala Lumpur. Another is "Shelter-the Home for the Homeless," a locally-based NGO. They take in abused and abandoned children. They are also preparing to open a vocational training school for drop-outs aged 12 to 15. At present most vocational schools, both government and private, only admit children who are 15 and above. It was found that those under 15 who had left school to work were not interested in going back.

The CHILD Information, Learning and Development Centre, another active NGO, conducts preschool teacher training programmes annually and runs and supervises 120 kindergartens working with 2,500 children in slum areas in and around the country. It also publishes workbooks for primary school children. Among other programmes, CHILD also organizes youth development programmes for teenagers from the slum areas to motivate them to discover their own skills.

## **Coordination of activities between NGOs**

The National Task Force on Working Children in Malaysia was founded after the first National Seminar on Working Children, held in Kuala Lumpur on 13 February 1993. The seminar was organized jointly by the CHILD Information, Learning and Development Centre (Malaysia) and Child Workers Asia (Secretariat in Bangkok, Thailand). At the end of the seminar there was a general feeling that all resources needed to be pooled to combat this problem. The Task Force is composed of representatives of several leading national NGOs and interested individuals.

In view of the fact that each NGO already had its own urgent priorities laying claim to its limited resources, it was decided that the Task Force would be a fairly loose and informal network. The secretariat for the first three years is the CHILD organization with a full-time secretariat coordinator.

Several projects were proposed: to have more public fora, seminars and exhibitions to educate the public and students, to further research on the identity of child workers in various sectors, to set up resource and community centres for those children identified and, last but not least, to campaign for the legislative changes which are urgently needed.

The ideas were noble, but the Task Force failed to obtain financial support. A follow-up seminar on 19 June 1993 had a very small number of participants because of lack of publicity and commitment, but those who did attend were very concerned about the growing number of working children, among other issues.

Regional network and cooperation is needed as the problem of working children is of world-wide concern. Child Workers Asia has been very supportive of our Task Force, but for long-term survival it is estimated that the Task Force would need RM 151,000 from now to September 1996.

## **Financial aid from UNICEF and UNESCO**

UNICEF's support to Malaysia is focused on the health and welfare of the very young child. UNICEF does not operate independent projects; all support, technical and financial, is channelled through government ministries under the coordination of the Economic Planning Unit of the Prime Minister's Office.

UNICEF continues to support the Ministry of Health with the immunisation programme by funding training courses, improving public awareness of the benefits of immunisation, and technical assistance. Breastfeeding, under pressure from the strong promotion of substitutes, as in many developed countries, is to be strongly supported by UNICEF. In the education field, UNICEF will provide support to assess the impact and improve the quality of some facets of the primary curriculum. A compendium of essential primary health care messages, "Facts for Life", will also be published with UNICEF assistance. In 1992 UNICEF sponsored a situation analysis of the current statutes relating to women and children in Malaysia.

UNESCO in Malaysia also works hand in hand with the Ministry of Foreign Affairs. It provides sponsorship for the Ministry's staff to attend conferences world-wide. UNICEF and UNESCO do not interact with NGOs unless these NGOs are recommended by the Prime Minister's Department. At present only SCAN and the Association to Promote Breastfeeding receive financial aid from UNICEF.

## **Ratification of conventions**

Malaysia has only ratified three ILO conventions relating to working children. These are Conventions No. 7, 15 and 123. Essential Conventions, for instance No. 59, No. 79 (Night Work of Young Persons), No. 90 and No. 138 on minimum ages, have yet to be ratified. There is a need to redress this.

The Minimum Age Convention of 1973 (No. 138) urgently needs to be ratified. It sets the minimum age for employment at 15 years and it has set the minimum age for work likely to harm health, safety or morals at not less than 18 years.

Unfortunately, Malaysia has not yet ratified the Convention on the Rights of the Child. It is time for our country to ensure that there is compulsory education until at least the age of 15. This would certainly pave the way for increased literacy rates and non-interference with school work.

### **Suggested role for the ICJ**

As mentioned earlier, there is still much work to be done in the neglected area of working children.

From a Malaysian perspective, we need first of all to recognise that there is a problem, after which we need to push for a solution. A nationwide survey must be conducted to determine the extent of the problem. Once we have a fair idea of the numbers involved, a national policy on child labour must be formulated to deal with some of its socio-economic causes and to provide a framework for far-sighted programmes in line with our "caring society" and "Vision 2020".

As one of the world's most rapidly industrialising countries, Malaysia needs to look at this problem afresh, and this can only come about with a change in attitude and increased public pressure on the powers that be.

This is where the ICJ can contribute. We are in need of financial and organizational aid. Programmes such as this one are ideal for pooling of ideas, but what about pooling of resources? Could the ICJ be of assistance? I hope the answer will be in the affirmative.

Acknowledgements:  
UNICEF, Malaysia  
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CHILD, Petaling Jaya.

# MONGOLIA

*Tsamba Tuvshintogs*  
Mongolian National Centre for Children

## **General information**

The population of Mongolia, growing at the rate of 2.6% per year, is rather young. In January 1993, 47% of Mongolia's 2.2 million population was under the age of 16, and 20% was in the 18 to 28 age bracket.

Mongolia has been undergoing profound political and socio-economic changes since 1990.

As in other countries undergoing simultaneous political, economic and social restructuring, Mongolia is now experiencing a difficult and crucial period; the most severe problem is that of the current economic crisis.

The effect of the economic crisis is destructive, demoralising and painful. The country's capacity continues to decline rapidly. Lax discipline and poor management lead to declining morale and social disruption. Mongolia's relatively well-developed systems of education and health care are in danger of being seriously crippled. The vulnerable groups of the population, especially women and children, are most severely affected.

## **Problems faced by children in Mongolia**

After the collapse of the Communist regime, the difficult circumstances of children in Mongolia became more widely known.

The number of homeless children and those involved in delinquency and crime is steadily increasing. The survey carried out by the Police Board found that the number of children who spent their time in trains had increased three-fold. There is no system to educate

and take care of them in Mongolia.

A centre with 60 beds in Ulaanbaatar where they can stay and be educated was only established two years ago. We need more such centres in each town and province.

The reasons for the existence of street children are partly the lack of adequate income in many families, and partly the insufficient care of parents. A host of new evils, such as family violence, alcoholism and drug abuse, prostitution and exploitation, have become a growing curse for children.

We try to arrange for the adoption of orphans, establish a charitable fund to help poor children, return street children to their normal life, and teach girls traditional skills and house management.

The government is promoting the establishment of orphanages, sanatoriums for children in especially difficult circumstances and disabled children, and there is an increase in the number of schools for mentally-retarded children.

We are also trying to improve the conditions of children's colonies by establishing a more human environment and compensating for losses which have traumatised children. There are no cases of AIDS, trafficking, discrimination or refugees in Mongolia at present, but we continue to be watchful.

### **Government measures**

As mentioned above, 47% of our population consists of children under 18 and consequently children's problems are always at the centre of government policy.

In this period of transition to a market economy, due attention has been focused by the government on social development and the protection of children's rights.

In May 1991, affirming its previous commitment to the full implementation of the Convention on the Rights of the Child, the Government of Mongolia issued a decree that established the Mongolian National Centre for Children (NCC).



The Charter of the NCC confers upon the organization a specific mandate for monitoring, promoting and protecting the rights of the child, with responsibilities for coordinating the activities of governmental and non-governmental organizations for the welfare of children.

The NCC has branches in every Aimag (province) and about 1,000 people are working in children's organizations. It is not a small number for Mongolia, but their knowledge and experience are not adequate under market economy conditions. All government branches in the towns and villages decide their child-related problems themselves.

Furthermore, organizations concerned with health, education, the law, the police, economics, culture, statistics and sports are taking some measures to decide children's problems in their fields.

We are elaborating the draft of the Law on the Rights of the Child in Mongolia. This law will soon be discussed at the Session of the People's Great Hural (Parliament), and will become the main document coordinating all relations on the rights of the child. The new law on the family also reflects many children's problems.

### **Cooperation with UNICEF**

Mongolia ratified the Convention on the Rights of the Child at the beginning of 1990 and elaborated the "Main Directions of the Government on Children and Young People". Subsequently the President of Mongolia signed the World Declaration on the Survival, Development and Protection of the Child to the year 2000, from the World Summit for Children, and this was confirmed in the Mongolian National Programme of Action as of this year.

For implementing the Convention on the Rights of the Child and NPA and in general, Mongolia always receives excellent assistance from UNICEF. Assistance from UNICEF has recently been extended and two years ago the Resident Representative's office of UNICEF was opened in Ulaanbaatar. We are very glad that Mr. James Grant, Executive Director of UNICEF, and other important people have visited Mongolia and studied the situation of children there.

UNICEF in Mongolia has close relations with Mongolian organizations, particularly the NCC. Last year UNICEF organized a survey on breastfeeding in all provinces, and has now published the journal "Breastfeeding" in cooperation with the Nutrition Research Centre and promotes the importance of breastfeeding.

In June UNICEF and the NCC organized the National Seminar on Training of Trainers under the theme "Mobilizing the Resources for Children" for persons working in children's organizations in Mongolia. The seminar was found to be very helpful in improving the knowledge, skills and experience of the participants.

UNICEF always tries to provide the organizations with the necessary equipment and materials. So far the NCC has been provided with a computer, copying machine and other office equipment.

In spring there was heavy snow fall in Mongolia, together with snowstorms. Some stockbreeder families lost their cattle, which is their main livelihood. During this difficult period UNICEF bought warm clothes and blankets for the children in the places where natural disaster had occurred, spending US\$ 50,000 on this alone.

On behalf of the children of Mongolia, we would like to express our gratitude to the entire staff of UNICEF for their daily help to us. In future we plan to organize a variety of training schemes and surveys, extend information materials, mobilise social resources for the welfare of our children and provide the necessary equipment.

### **International cooperation**

International cooperation, both bilateral and multilateral, is crucial for the NPA to come to fruition. Relying on the continued generous support of the international community for Mongolia's reforms, and in the spirit of the World Summit covenants of the Convention on the Rights of the Child, we will seek the expansion of material and technical assistance from the agencies of the UN system, including the World Bank group, the UNDP, UNICEF, the UNFPA

and the WHO, and from the major bilateral donors, such as China, Denmark, Germany, the United Kingdom, the United States and others.

On the regional plan, special attention will be accorded to a better utilisation of the cooperative potential of regional and international organizations such as ESCAP and other donor entities.

The NCC will also work to develop cooperation with the appropriate organizations in the countries of the Asia and Pacific Region. In particular it aims to learn from the knowledge and experience of the child and women's welfare organizations about the development of joint efforts in the fields of immunisation and other disease-prevention activities. This will include the exchange of information on the medical, psychological and physical therapy of disabled children in, amongst other things, rehabilitation, education and vocational services.

# NEPAL

*Tarak Dhital*

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## Introduction

To many people around the world, Nepal is the land of Mount Everest, the highest summit in the world. The rich national heritage of this little Himalayan country - hills and forests, green valleys, springs and lakes - is well known, making Nepal a famous tourist destination. But not so well known is the plight of her people, and especially her children. Even the beauty of the land is eclipsed when the socio-economic and cultural realities of the lives of its children are more closely examined.

Nepal, with a very conservative society very far from basic social change, is still ruled by reactionary customs and feudal values. Until a few years ago, the rights of children were widely violated in every social sphere and were not considered as part of the social and human rights movement. In the last three or four years this situation has drastically changed. The government, NGOs and human rights organizations have become more concerned with and focused comparatively more attention on the rights of children.

Following the fundamental change in the Nepali political system in 1990, children's issues moved into the limelight. The movement for the rights of the child is gaining in popularity and is becoming increasingly grassroots-oriented. The government has ratified the Convention on the Rights of the Child and adopted the Children's Act 1992. Similarly, individuals, groups and communities are taking the initiative in organizing and sponsoring more activities for the benefit of children. However, despite all these developments, no considerable change in the status of children has taken place and they continue to suffer.

## **Situation and problems**

As one of the least developed countries, Nepal has similar problems with regard to its socio-economic development as other countries in the region. National development in Nepal has not only been very slow, but in some cases has actually greatly contributed towards widening the gap between the rich and the poor. About 80% of the total population, who are basically dependent upon agriculture, are either landless or working as tenants on their landlord's land. The land-holding system or property distribution in the country is very unfair and consequently, for a large majority of the Nepali population, survival is an everyday struggle. The growth of rural poverty has resulted in an increase in the migration rate of the rural poor to the cities, which in turn has created many socio-economic problems in the urban centres, such as unemployment, population increase, unfeasible development planning, the uncontrolled growth of urban centres and the growing gender discrimination against women. The overall development of Nepali children is naturally adversely affected by this situation.

## **General problems**

According to the 1991 census, children under 16 constitute 47% of the total population. Born in a country where 71% of the people live below the poverty line, most of the children are not only denied the basic rights of children, but sometimes even minimum human treatment. In a society plagued by gross illiteracy, ignorance and economic hardship, it is the children who suffer most. These innocent ones, who should be seen as an investment for our future and who, by birth-right, are entitled to "the best mankind has to offer," are instead a vulnerable group without identity. Nepali society still clings to the notion that since nature has provided the children, it should also take care of them, and thus fails to provide its children with proper care.

The general problems of the majority of the children are reflected in their health, nutrition and educational status. Out of the total population of 8.04 million below the age of 16, almost 60% are deprived of their basic right to education. Many children die of easily preventable illnesses, such as dehydration, and immunisation

facilities have yet to reach the majority of children. Nepal is known as the country with one of the highest rates of infant mortality, which is 165 per 1,000. Malnutrition is the most common ailment; 50% of children suffer from mild and severe malnutrition. Illiteracy, malnutrition and disease have become an integral part of life for the majority of children in Nepal.

### **Other serious problems**

Poverty, social injustice, mass illiteracy and ignorance have led to the development of child-related problems typical of underdeveloped third-world countries.

#### **a) Child labour**

Child labour is an integral part of Nepalese society, where children shoulder the responsibility of many jobs by the time they are five or six. The child labour force has reached an overwhelming 5.7 million (nearly 60% of the total child population), out of which 4.9 million are involved in agriculture-related jobs and the rest in factories, services, transportation, tea plantations, construction, etc. In fact, there is virtually no sector in which children are not employed. The most prominent export industry of Nepal, the carpet industry, employs more than 150,000 child workers. Similarly, about 47,000 children work as domestic servants, dishwashers and waiters in the tea shops and restaurants of Kathmandu alone. A large number of child workers are employed in the tea plantations, stone quarries and brick kilns, and in the factories, including the "bidi" factories. The majority of child workers are underpaid and made to work under conditions that are hazardous to their health. They are insecure and exploited.

#### **b) Girl trafficking/child prostitution**

Young girls from Nepal are trafficked to India every year by the thousands, ending up sold to the brothels of different Indian cities such as Bombay, Delhi, Calcutta etc. The number of girls trafficked is estimated to be 5,000 to 7,000 a year, and of the 200,000 Nepali girls estimated to have already been sold to

brothels, 20% are under the age of 16.

Child prostitution within the country is also increasing in and around the highways and in cities such as Kathmandu, Narayangarh, Biratnagar, Dharan, Pokhara, etc. Similarly, instances of children being abused sexually and drafted into prostitution at their workplace, e.g., the carpet and garment factories, are also quite common. In fact, many carpet and garment factories reportedly have been running a side business in prostitution and trafficking, as for example in Kathmandu, where many girls have been trafficked to India by way of carpet and garment factories. Perhaps the most blatant examples of child prostitution in Nepal are those carried out in a cultural guise. Western Nepal still practices the age-old custom of "deuki" and "badi", where the female child is sacrificed to deities; after exploitation by the priests and village landlords, these girls enter prostitution openly.

c) Children in bondage

Slavery was abolished in Nepal 68 years ago but its traces are still apparent, especially in the mid-western and far-western regions of Nepal, where many people are bonded under the *kamaiya* system. The *kamaiya* system is a contemporary form of slavery where people are debt-bonded to the feudal lord and landlords. Even today, a slave auction takes place on the day of *Maghesankranti* (mid-February) where *kamaiyas* are sold between owners. According to a study carried out by the National Study Group for Bonded Labour in Nepal in 1987, there are an estimated 40,000 bonded children in the country. Apart from the *kamaiya* system, slavery or child servitude also exists in other sectors, such as carpet factories, domestic service and brick kiln factories.

d) Street children

The phenomenon of street children produced by growing urbanisation is a common characteristic of the developing world. Nepal, too, is not free from this. The number of children on the streets of Kathmandu and other cities now exceeds 5,000. These children have run away to the cities to escape the hardships of

village life and, in many cases, parental negligence and maltreatment by step-parents. Some are orphaned and abandoned.

The number of such street children in Kathmandu alone is more than 1,200. They make a living mainly by rag-picking (collecting pieces of plastic, metal and other recyclable materials to sell in junkyards) and begging. The street children of Nepal are mobile, they are constantly travelling. Natural disasters such as floods and earthquakes also result in an increase in the street-child population.

e) Gender discrimination against women

Nepalese society is perhaps one of the most prominent societies which prefer sons to daughters, resulting in the negligence and exploitation of daughters. As in other South-Asian countries, girls in Nepal are viewed as a liability. The birth of a daughter, who is viewed as a burden to be raised somehow and given in marriage, is certainly not an event for rejoicing. Their status in the family and society is low and they are treated as second-grade citizens. They are even discriminated against in nutrition and medication. As child workers, they work more than their male counterparts. According to a 1988 UNICEF report, girls in Nepal work 7.31 hrs. a day on average, while boys work 4.93 hrs. a day. Deprived of any opportunity to develop their personality, girls are raised to be docile and submissive and are married off at an early age.

f) Child marriage

Nepalese society still practices child marriage, and female children are the real victims of this social ill. In fact, 40% of marriages involve girls of 14 and under, and 7% involve girls of 10 and under. Even though the law prohibits the marriage of a girl under 16 and a boy under 18 (with parental consent) and a girl under 18 and boy under 21 (without parental consent), the law is only on paper, and Nepal has the unfortunate distinction of having the highest rate of child marriage in South Asia.



## **Status of the rights of the child in Nepal**

It has not been long since the issue of child development and the rights of children began to be advocated in Nepal. During the 30 years of the Panchayat regime before 1990, child-related activities were viewed only as charity, not as development. Even though the Nepal Children's Organisation (NCO) had been established 29 years previously, the issue of the rights of the child was only a formality. Although drastic change has yet to take place despite the establishment of a democratic government, some positive developments have taken place with regard to children's rights.

The ratification of and commitment to implement the Convention on the Rights of the Child and the goals of the World Summit for Children (1990) are very positive developments with regard to children's rights in Nepal. Similarly, the introduction of the Children's Act 1992, the first-ever child law in Nepal, is a crucial achievement. The government has also formulated its plan of action for 1992. It is good news that the Children's Act 1992 is to be enforced; however, there are not enough commitment and programmes to translate the spirit and words into deeds.

There is no denying that the Children's Act 1992 is the first comprehensive and positive step in the field of children's rights in Nepal. However, the children's act is vague, insufficient and incomplete, and fails to reflect fully the sentiments of the Convention on the Rights of the Child that Nepal has ratified. The Labour Act and Children's Act clearly prohibit the employment of children under 14. The Constitution of Nepal and various other acts, including the National Code, also have provisions against any form of servitude and trafficking and selling of human beings. These various commitments would seem to suggest that the State will take special responsibility for protecting the rights of the child; however, several severe violations of the rights of the child occurred after the restoration of multiparty democracy in Nepal, and these not only disappointed the people but also discouraged the movement for the rights of the child in Nepal. In short, even though the issue of children's rights has attained a theoretical success in the past two to three years, much remains to be done to bring about its practical success.

## **The prospect of children's rights in Nepal**

Child development and children's rights are not easily attainable goals for Nepal, but they are not inaccessible. Where there is a will, there is a way. Children are the future of a nation, and it is therefore the responsibility of all individuals, groups, organizations and institutions, besides the government, to support the children's rights movement in order to ensure a bright future for today's children. This responsibility demands dedication, commitment and the active involvement of the government and people in all walks of life. Let us discuss here the roles of the government, NGOs and UN agencies for the attainment of children's rights.

### **1 Role of Government**

Since the restoration of democracy, the Government of Nepal has devoted attention to the issue of children's rights. The Convention on the Rights of the Child has been ratified, the Children's Act 1992 is to be enforced, and several commitments in both the national and international sphere have been made. Instances of violations of the rights of the child by the government and denial of facts about child-related problems from the outside world can also be found. The urgent task of preparation and implementation of action-oriented plans and programmes to combat the problems of children has yet to see the light of day. Similarly, the government has submitted no report so far about the rights of the child to the Committee on the Rights of the Child nor are any NGOs being consulted in this regard. The government has also failed to coordinate and support NGO's activities for children. The establishment of a national commission on child development, as announced by the government, has been awaited for a long time.

However, the situation could be improved if the government were to take the initiative in performing the following tasks:

- a) implementing the present laws effectively to turn the spirit of the law into real practice and forming a national commission of human rights and children's rights;
- b) studying and publishing correct statistics on the problems

and situation of children, analysing them, and accordingly preparing action-oriented plans for their solution;

- c) overcoming its own bureaucratic complications, maintaining unbiased coordination with the NGOs involved in children's issues and inspiring activities at the grass-roots level;
- d) formulating the plans of action required to empower and strengthen the movement for the rights of the child;
- e) giving special attention and priority to the formulation of plans and programmes for children in the most difficult circumstances.

## 2 Role of NGOs with reference to the activities of CWIN

Although NGOs in Nepal have not been involved for very long in the field of the rights of the child, they have been playing a very vital role in advocating the rights of the child movement and helping to protect children living under the most difficult circumstances.

CWIN, the first children's rights activist organization in Nepal, has taken the initiative in raising and advocating the issues of the rights of the child and children in especially difficult circumstances. From its beginning, CWIN has advocated that NGOs are not merely a charity centre, but rather a social action group that can actively contribute to the social progress movement. Similarly CWIN became a voice for voiceless children while at the same time organizing national campaigns to make the public aware that children's rights are not only part of human rights but also a special right designed to protect the future of the nation. As the first movement for the rights of the child in Nepal, CWIN has also been documenting violations of the rights of the child and monitoring them as a matter for public knowledge.

The establishment of CWIN represented the beginning of an organized rights of the child movement in Nepal and the breakdown of the traditional concept of social service. Even at the time of the partyless Panchayat dictatorship, CWIN organized activities against child labour and child servitude and

formulated the plans of action required to protect the special rights of children in the most difficult circumstances.

After the restoration of democracy, several new NGOs became active and empowered the rights of the child movement. They introduced several new programmes in the problem areas and built relevant coordinating programmes. However, the existing situation and status of children require greater efforts and initiatives from NGOs. If we, the representatives of the NGOs, properly review and assess the situation in the country, we find that many things have yet to be done in the field of children's rights. There are still many people, communities and social strata who are totally unaware of children's fundamental rights, nor do they know how to use the public facilities for the benefit of their children.

Examples and experience have shown that development is not possible through the government only, particularly when society has to build up the human rights movement. The public should, therefore, become more aware, for which purpose the NGOs with community links should actively initiate social mobilisation. However, there are not many NGOs in Nepal working with dedication in the field of children's rights. The formation of a forum such as the Children at Risk networking group is an inspiring event, as the group has not only been coordinating activities for children but also extending the support they require.

In order to overcome the problems faced by NGOs and to make NGOs more active and dedicated in the field of children's rights, we suggest the following:

- a) advocate the rights of the child. Strengthen and empower the rights of the child movement and contribute to the future investment of the nation;
- b) build up community links with the people and introduce community programmes dealing with drinking water, sanitation, income generation, formal/informal education/skill programmes etc. and give up the larger project-and city-based action programmes;

- c) keep records and documents on the violations of the rights of the child, lobby for the effective implementation of the laws and campaign for the protection of the rights of the child;
- d) develop small, affordable, participatory and grass-roots based programmes for children, so that the community can sustain them on a long-term basis;
- e) develop coordinating initiatives and exchange programmes between the NGOs within the country and within the region, so that the NGOs can learn from each other's experiences and ideas and can develop joint or collateral programmes for the benefit of the community and its children.

### 3 Role of the international NGOs and UN agencies

As the development partner to the government and national NGOs, international NGOs and UN agencies have been playing a significant role in Nepal, in its national development tasks. These organizations have provided many welfare services and introduced several rural and urban development schemes in the country. However, although most of the international NGOs and UN agencies state that they are guided by the fundamental principles and objectives of the United Nations Declaration of Human Rights, and the conventions on women's and children's rights, practice has shown that they give very little time and attention to awakening people in this regard. Most of their activities and plans of action are very expensive and their programmes are difficult to understand for poor and unsophisticated people. If the resources and skills of the people working in these organizations were properly used, the results obtained would surely be much better for both adults and children than they are now.

In Nepal, UNICEF, the ILO and UNESCO have organized several programmes for the benefit of children. However, individuals and NGOs which do not have an influential approach to them do not get their support and help. These organizations are supposed to support and encourage programmes such as the right of child advocacy, education for poor and working

children, issues such as bonded child labour, child labour, street children, trafficking and prostitution and so on, but they have failed to do so.

We put forward the following suggestions for these organizations:

- a) inspire and encourage the indigenous efforts and sustain and help them to develop further;
- b) reduce their level of expenditure on the marketing of expertise, high-level research and survey studies and place more emphasis on community-based socio-economic development projects;
- c) help empower the people's initiatives for human rights, children's rights, women's rights, indigenous people's rights and so on;
- d) overcome their own bureaucratic complications and work as a dynamic development partner of the government;
- e) play the role of facilitator in order to unite all indigenous initiatives and coordinate them for a strong rights of the child movement.

## PAKISTAN

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### Introduction

Children's rights cannot be seen as an isolated problem. Children's status, conditions and development will suffer or grow according to the environment around them. Their struggle has to be linked to the overall human rights movement and the linkage has to be at both ends. Human rights activists cannot afford to ignore or give low priority to the largest human group on this planet. Even at the time of a popular movement for political rights, the rights of the child cannot be put in second place - as they often are. Children's rights advocates must keep pace and be involved in the larger human rights struggle. Perhaps one of the reasons for the Brazilian achievement in legislative reforms was their integrated struggle. The Brazilian activists were organized and well prepared to contribute positively for children once political realities changed. In Pakistan the experience was the reverse. During military regimes human rights activists focused heavily and solely on the political rights of adults. The rights of the child were absent from their agenda. When the political system changed, there was not sufficient background work on children to be useful. One or two laws were haphazardly passed as window dressing for the international community.

It is also correct to say that where basic rights are denied to all, the child suffers the most. Children are least heard and most ignored. If the independence of the judicial system is eroded and the legal profession exploited, the child along with others will also lose the right to expeditious justice and to be heard by an efficient judiciary. In such societies child jurisprudence is the least-developed area of the law.

## **The position and status of children**

Pakistan is no exception to the problems faced by children living in an overpopulated developing world. Child labour, bonded labour, crimes against children and a total neglect continue without concern. Statistics of child workers etc. are relevant, but not sufficiently important for human rights activists. Even if a single child is violated, it is one too many. Nevertheless, statistics can be of use if measured properly. They must be measured in comparison to other countries so that wherever important changes occur, others can learn from this experience. Improvements or deterioration in the situation should be monitored and pointed out so that timely measures can be taken.

Statistics can be used convincingly for human rights advocacy work. For example, if a large number of children die each year through sheer neglect, then could that particular society oppose population planning? After all, if they are not prepared to protect a born child, do they have the moral standing to oppose abortion rights? The targets of NGOs and intergovernmental organizations should reflect statistical improvement for children. If resources are allocated for specific child projects, it should then be seen whether this has actually made some difference to the children's situation. In short, NGOs can use statistics effectively for monitoring and campaigning.

The Human Rights Commission of Pakistan (HRCP) publishes an annual report on the state of human rights in Pakistan. Portions of the 1991 and 1992 report are given below to assess the conditions of children in specific areas.

### **Child labour**

The incidence of child labour in the country was remarkably high. More than 2 million children worked for a pittance. One-third of the labour force was under 18 years of age. The law did not prohibit child labour; it only aimed at protecting the child from economic exploitation or from performing any work that was hazardous to its physical, mental, moral or spiritual health. In the event, it failed to do much of that as well.



1991 saw the Parliament add a few more items to the list of such hazardous occupations. The list, still a short one, includes occupations such as cinder picking, ash-pit clearing, catering or construction on railways or in ports, selling of crackers and fireworks in shops, and manufacturing processes such as bidi-making, carpet-weaving, cement, explosives and industries using toxic metals and substances such as lead, mercury, pesticides and asbestos. However, the prohibition did not apply in practice. It was widely known, for instance, that the workers in the carpet-weaving industry or on running trains were, for the most part, children aged six and up; and accidents did occur. Three child workers were severely burnt in a shoe factory in Lahore's Walled City during the year and were admitted to hospital in critical condition. Also known were the mostly dangerous working conditions maintained by employers who counted heavily on the cheapness of child labour. Not a single case came to light of a 'hazardous' establishment being questioned about employing children and violating rules related to working conditions. The ILO estimated that there were 50,000 bonded children in the carpet industry, and half of them died before reaching the age of 12(1991 HRC report).

The Constitution of Pakistan prohibits children under the age of 14 from working in hazardous occupations. The constitutional guarantee remains on paper alone. Despite the fact that thousands of children work long hours in dangerous circumstances, there has so far not been a single constitutional petition by a child or anyone else demanding this right for the child.

### **Abuse and violence**

Numerous cases of the rape of minors were reported.

- One 45-year-old Sindhi landlord assaulted a four-year-old and then sent warnings to the victim's father against incriminating him in court.
- A seven-year-old was raped in Lahore. She also had signs of violence on her body.
- Two uniformed policemen hauled a boy labourer away in

their van and then assaulted him for an hour in a remote place. The boy was rescued by his fellow labourers. No case was registered against the culprits.

- The body of a 14-year-old boy was found in the Lahore Fort. He had been sexually assaulted, violently treated and strangled.
- The Imam of a masjid raped a boy of eight. The mother of the boy traced him to the Imam's quarters and found him lying half-unconscious without his clothes on.
- An 11-year-old boy was kidnapped, sexually assaulted and stabbed to death.
- A 15-year-old was subjected to sexual assault, then strangled inside Delhi Gate in Lahore.

*(1991 HRCP report)*

Child marriage is widespread. Pakistani law prohibits the marriage of a girl under the age of 16 and that of a boy under 18 years. While the law provides token fines and punishments for parents/guardians and the person solemnising such a marriage, the marriage, nevertheless, is recognised under the law. Reports of child marriages can only be made by the authorities. So far the authorities have never taken this responsibility seriously.

The official statistics of the 1972 census show that 97,024 children between the ages of 10 and 14 were married (out of a total of 7,835,180 children in this age category). Twice as many girls as boys were married while still children. The authorities, the government, the media and society have never taken note of this injustice to the childhood of children.

### **In prisons**

No adequate laws exist on imprisonment of children. Minors have generally been detained under the outdated vagrancy laws which

consider it offence enough if a minor in the streets is unable to give his address of residence. Minors in Pakistani jails are also there on charges ranging from obstructing traffic by vending their wares on the roadside to theft, murder, and even rape. No separate arrangement exists for the housing and treatment of child prisoners and many remain confined for long periods without being brought to trial. When eventually tried, some 80% are released because the charges have not been proved or the offence was a minor one. The pattern of treatment they receive includes prolonged exposure to hardened criminals, use of violence against them, and subjection to sexual assaults.

(1991 HRCF report)

In April, the Lahore High Court took *suo moto* notice of a press report about conditions of child prisoners. As a result of this and follow-up investigations, the following were some of the facts that came to light: there were 1,853 children of 15 years or less in the prisons of Punjab Province alone. In April alone, according to the jail authorities, around one fourth of the child prisoners were released on bail every day. At the same time a similar number was arrested each day. If these figures are to be trusted, it appears that around 120,000 children are imprisoned each year in the Province of Punjab alone.

In 1992 the number of child prisoners increased. The HRCF gave an update of child prisoners. They reported that the charges against child prisoners varied from petty theft and vagrancy to sexual offences. Nine-year old Sajjad, of Shadbagh, Lahore, was produced before a court handcuffed and in fetters, charged with stealing shoes from a mosque. He was remanded in custody and sent to jail.

Although the law provides for automatic bail for children under 14, in practice this rarely applies. The law also requires the accused detainee to be produced before a magistrate within 24 hours, but this too was infrequent. The bulk of the child prisoners were awaiting trial and there were some whose trial had gone on for over two years. One in Gujrat had been there for two years for theft, another in Gujranwala for four years for a sexual offence. Under the Hudood Ordinance, children of all ages could be sentenced to up to five years in jail.

Of the child prisoners whose trial did conclude, most were judged innocent and released. Consequently, their detention and exposure to prison conditions at their age had been unwarranted.

A large number of child detainees were there simply because they had no legal assistance.

In Punjab and Sindh the law, which is not always followed, provides for separate institutions for children. The other two provinces have no such provision. Nearly 2,000 child prisoners in the country were thus made to share accommodation with adult criminals.

A study in Punjab showed that over 22% of the child inmates were subjected to sexual abuse in jail.

A majority complained of torture by the police.

Sindh and Punjab have laws which allow juveniles to be tried by special juvenile courts, but none exist there or elsewhere.

As reported by the HRCP, legislation for children is dismal. Most laws date back to pre-Independence days. Those enacted after Independence have either not been enforced or lack thought for the child.

Nothing is an offence for a child under seven years of age. Between the ages of seven and twelve, a child may be detained if he or she appears to understand the offence. However under the Islamic penal laws, theoretically, even a child under seven can be punished for theft, rape, dacoity and drinking. This law, however, prescribes lighter sentences for children. Such so-called lighter sentences are actually quite harsh, as Islamic penal laws award extreme punishments.

In 1992, the HRCP reported.

- Nearly 3.7 million babies were added to the population during the year. More than 100,000 of these died because of lack of basic care. During the same period nearly 900,000 children up to five years old died from malnutrition and preventable diseases.

- Health cover, inadequate for the population generally, was even more so for the child. The child mortality rate remained one of the highest in the world, going up to 20% in Baluchistan.
- Child education was the parents' responsibility, only partially shared by the State. No earnest was given, apart from an 'education policy', a mere declaration of intent, announced late in the year, of a resolve to make primary education compulsory or universal.
- Recreational facilities for the child continued to be meagre, and remained mostly accessible to the elite.
- Little practical assurance came forth that children now living in poverty will make a transition to enable them in their own time to offer better opportunities to their children.
- There was a noticeable increase in child begging and vagrancy in city streets. In Peshawar a large number of these were Afghan refugee children, only 4% to 5% of whom had any opportunities for schooling.

### **Child labour**

Children constitute as much as 46% of the nation's labour force. The constitution prohibits only hazardous occupations to minors. Thus, child labour being permitted in principle, it was ignored when it occurred, as it routinely did, in the half-dozen categories of the so-called hazardous occupations too. No instance was reported in 1992 of any establishment being penalised for employing children in a category of occupation banned to them. Indeed, reports abounded of their working in the carpet industry, chemical manufacturing, in ports and railways - all occupations prohibited to them.

A move in the United States Congress last year to ban carpet imports from countries that employed child labour caused the Pakistan Federal Minister for Labour to castigate the HRCP publicly as foreign agents, as the HRCP happened to be a source for the ILO report that triggered the congressional initiative. The facts, however, remained incontrovertible. A subsequent news story by the official

news agency, APP, described the grim conditions in which children worked in the Thar desert: over 30% of the area's 5 to 14-year olds spent 12 hours a day at 2,000 looms, almost without a respite, as bonded labour. The majority already suffered from various respiratory diseases, tuberculosis, anaemia, night blindness and other illnesses caused by malnutrition, which was rampant.

### **Child trafficking**

A number of instances came to light during 1992 of children being smuggled into Gulf States and sold to sports-loving sheikhs to be used as jockeys in camel-racing. Their light weight was a minimal burden for the competing animals, and they also kept them on track and goaded them on. They were tied to the animal's rump, where their frightened shrieks were considered an effective spur for the racing quadrupeds. One route for the traffic was the remote Makran Coast. An HRCP investigation along that channel found (a) that it was a thriving trade, (b) that mostly the parents themselves sold their children because of their poverty, and (c) that influential personalities in Makran were involved in the traffic. One estimate put the yearly average of child outflow at over 6,000.

An unconfirmed report said that Pakistani children sold and bought abroad served yet another purpose, as donors of body organs required for transplants. They were smuggled through the coastal points of Makran, Gwadar, Pasni and Ormara. In one instance of aborted smuggling, the ages of the seven children ranged from two and a half to four years. Three of them came from the Hindu Magwar community and three were Muslims. In another case the ages of the 32 children being transported ranged from two to seven years.

Children were also reportedly used as heroin carriers through Iran.

One factor which explains why this traffic has not stopped is that no effective law exists under which a parent who sells his child for such purposes can be punished. The only law on the books against a parent or guardian pledging the labour of a child dates back 60 years and provides for a fine of a maximum of fifty rupees.

## **Violence against children**

During 1992 there were thousands of reported cases of child abuse, and of children killed, kidnapped and reported missing. Those sexually assaulted constituted a large part of those cases. Incidents included a 10-year-old being assaulted and then strangled, and parents of a locality discovering that the imam of the neighbourhood mosque had been committing offences against 50 of their children. Culprits of this category were rarely brought to justice. They usually found influential persons to have the incidents hushed up.

Kidnapping was mostly aimed at taking children and selling them in the tribal areas of the country, from where they were usually hired out for unpaid bonded labour. In one instance, 12 kidnapped children destined for tribal areas were recovered from locked rooms in a house on Ravi Road, Lahore.

About 1,000 children were reported kidnapped during the year in Lahore alone and 400 in just three months in Karachi.

Kidnapped children were rarely ever recovered. The police felt they were not sufficiently equipped to follow up cases of lost children, and had therefore become accustomed to not taking the complaints too seriously.

## **Convention on the Rights of the Child**

Pakistan has ratified the Convention, but with a sweeping reservation. This reservation says that "the provisions of the Convention shall be interpreted in the light of the principle of Islamic law and values." Such a statement can be very dangerous. Pakistan's government should be asked to define the Islamic law and values relating to the child. It must specify the provisions of the Convention which are not in conformity to such laws and values. As is well known, Islamic interpretations can be liberal or extremely conservative. By making this reservation, Pakistan has left the world to guess what rights can be recognised by it. By adding Islamic values, the government has added further confusion. Values, as such, have no legal sanctity. Under Pakistan's laws, the right of inheritance of orphan children has been controversial. The popular Islamic belief

is that a child cannot inherit the property of its grandparents if the parent predeceased the grandparents. In 1961, a law was promulgated in which the orphan grandchild was given the right to inherit the property which would have been inherited by the deceased parent. Numerous court decisions have declared this law contrary to Islam. Fortunately, this law is protected and has so far survived.

It has now become an automatic response to explain away the problems of children as directly related to poverty. This is, however, not always the case. Torture of children by police authorities or corporal punishment in educational institutions is not the result of poverty, but of an attitude where physical violence towards children is seen as a necessary method of discipline. Respect for the child is a type of social behaviour.

In some parts of Pakistan children are victims of odd superstitions. Women who cannot conceive pray at shrines. They make several promises on behalf of the unborn to the Sufis of these shrines. At one such shrine, the mothers promise to give away their first-born to the Sufi of the shrine. He casts an iron cap upon the heads of such children. They are called Rat Heads, as their bodies grow but their head remains small. It is believed that the Rat Heads must be given alms, otherwise their curse would disable a child of the family who refuses to give such alms. Rat Heads are often seen near the railway stations of large cities. Despite repeated protests against this practice, the government has been unable to arrest the Sufi. They argue that Rat Heads are given away by parents and as such there is no offence. The crime is not seen as a crime against the child, but the entire practice is viewed as though a child were the property of the parents, to be used in any manner.

Child rights groups must, as a priority, begin by recognising the child as a human being who has special rights. The philosophy of protecting the child must be reviewed. It is rights and not protection which will eventually give respect to the individual and collective freedom to children. Being young should not be a disadvantage. Children are a special group of people and must have special rights which do not compromise their basic freedom.

Often, well-meaning groups propose measures to protect the child, but sometimes they fail to see or notice that such protection



may in another manner be detrimental to the rights of the child. One such example are the mandatory *in camera* proceedings in trials involving children. The option of *in camera* proceedings must be exercised by the child and not thrust on every child. Sometimes open trials are far more helpful to the child; open trials are more accountable; reports of such trials form public opinion for the child; judgments, if reported in law books, help lawyers to fully develop child jurisprudence.

In the same manner, child rights groups must at last resolve the controversy on abolition versus regulation of child labour. Should the child have the right not to work? Or should the child not have the right to work? These two questions do not only touch upon the controversy of abolition versus regulation, but also upon rights versus protection. Should the child have the right not to work extended to him/her or should the child be protected from work?

It is now, more or less, a foregone conclusion that regulatory legislation on child labour does not work for a number of reasons. At the same time, one can only guarantee rights to the child. Society can recognise that the child should not work and extend this recognition as a fundamental right to her/him. This special right should be interpreted to virtually deny child labour, as children do not have the right to contract or own property etc. It automatically also opens the window for the child to have the right to food and education if it has the special right not to work, or perhaps the child must also be guaranteed free and easily available education. It is argued that taking away the choice to work reinforces the protectionist approach.

At the same time, if child labour is not prohibited, it will continue under some pretext or other and the child will continue to be exploited; however, these contradictions have to be reconciled in order to give a better status to the child.

### **Role of the NGOs and other agencies**

In Pakistan, there is not a single NGO which works purely for the advocacy of children's rights. Most NGOs working for children are welfare-oriented. Although these NGOs are well meaning and committed, their philosophy is misdirected.

Human rights organizations can play a pivotal role in redirecting the orientation of children's organizations. The age-old controversy of abolition versus regulation of child labour exists within almost every organization.

The intergovernmental organizations "play it by ear." During military regimes they had a "hands off" policy towards NGOs working for the rights of the child. However, whenever the national governments gave them a relatively free hand, they were active. Their involvement has of course been dependent on the efficiency of the NGOs and the encouragement of governments.

## ICJ

In view of the fact that the ICJ has a specific mandate and special expertise, it is recommended that it should focus more on those areas of child rights which fall within its mandate and are best carried out by it. Recently Amnesty International sent out an urgent action for Salamat Masih. Salamat, a 13-year-old Pakistani Christian boy, was arrested in May 1993. He is accused of writing blasphemous statements against the Holy Prophet on a wall. The offence carries the death penalty. Efforts to secure bail for Salamat have failed. His lawyers returned the brief for fear of being harmed by the fundamentalists. The ICJ should consider sending observers of international repute to such trials.

As the ICJ has a unique position amongst lawyers and judges, it could introduce child jurisprudence or children's rights in seminars, workshops etc. where judges and lawyers participate. The judiciary in Pakistan is not aware or sensitive to the rights of the child. Exposing them to judicial pronouncements elsewhere, which uphold children's rights, could open a window for the child in Pakistan.

## PHILIPPINES

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Children are persons below the age of 18 according to the UN Convention on the Rights of the Child, 1990. In the Philippines they constitute 49.3% of the total population of 63 million, according to the National Census and Statistics Office (NCSO). Fifty-one percent of Filipino children are male; most of the children come from marginalised peasant and worker families. Together with adults, they confront problems that violate their basic rights to survival, development, protection and participation.

The age-old problems of poverty and underdevelopment and their attendant causes continue to pervade Philippine society. Unequal property relations and inequitable distribution of income characterise the social structures not only in the mainly agricultural economies in the rural areas but in the cities as well. Despite the Comprehensive Agrarian Reform Law (CARL), landed interests still lord over the lives of landless sharecroppers and tenant-farmers. In 1991, 10% of the families in Metro Manila accounted for 38.1% of the total income, 2.4 percentage points higher than the figure for 1988; those in the bottom 30% of the poverty ladder had a share of roughly 10%.

Meanwhile, both long-standing and recent threats to the well-being of the people remain: the debt problem, rapid degradation of the environment, hunger, joblessness, illiteracy, technological backwardness, disempowerment and marginalisation of minorities.

Widespread lawlessness is also prevalent not only among civilians but even within the ranks of the police and military. It is not uncommon to find policemen and soldiers among the perpetrators of robberies, hold-ups and kidnappings. Sexual abuse and rape are also on the rise and have become daily fare for the news-hungry media.

Most adversely affected by the ever-worsening crises of Philippine society are the Filipino children. Ill-health and lack of educational opportunities continue to hound them. Many children still die from preventable diseases such as diarrhoea, pneumonia and measles. These are infectious diseases brought about by endemic poverty and the lack of essential services such as the provision of potable water and an adequate sewerage system. Most children who die from such diseases come from low-income families. In 1991, 61 infants died out of 1,000 live births according to the Department of Health (DOH). According to the Food and Nutrition Institute (FNRI), 70% of Filipino pre-schoolers are undernourished.

While the Philippines constitution places high priority on education in the allocation of the national budget, the 1993 General Appropriations Act allocated only pesos (P) 30 billion, or 11% of the total national budget of P309 billion, for education. However, 38.3% - or more than a hundred billion pesos - were prioritised for debt servicing. Because of this perennial shortfall, the school system is continually plagued by problems such as teacher shortage and lack of classrooms and school buildings. In fact, there is an annual shortage of 47,000 teachers and 11,000 Barangays in the country still have no schools.

Among the results of poor-quality education in the country is the low passing average among children. Only 24% of the more than 14 million school-age children attain secondary education. Moreover, the 1988 Programme to Decentralise Philippine Education (PRODED) impact study showed that first-grade pupils learn only 60% of the target content while those in sixth grade learn only 50%.

Worse, President Fidel Ramos has issued Memorandum Order No. 27, which sought to further reduce by 10% the budget of State colleges and universities, and urged them to embark on streamlining and other cost-cutting measures, making education in State colleges and universities almost inaccessible. It should be noted that the budgetary support of the national government is concentrated on basic education and is very limited at the tertiary level.

Children in Especially Difficult Circumstances (CEDC) is also an alarming phenomenon in the Philippines. CEDCs includes street children, children in situations of armed conflict, working children,

children of indigenous peoples, differently-abled children, child prostitutes and child victims of disasters.

### **Street children**

There are about 1.5 million street children roaming in the asphalt jungles of Philippine cities. Most of these children are hawkers selling cigarettes and newspapers, collecting other people's refuse and shining shoes. They work from 6 to 14 hours a day and earn the measly sum of P10 to P18 daily. These working children are essential cogs that help to run the so-called underground economy.

Also found among street children are child prostitutes. Most of them are engaged by pimps and are easy prey for pedophiles. Their number is estimated to have increased from 20,000 in 1987 to about 60,000 in 1991.

### **Child labour**

There are also working children who can be found labouring in sweatshops and agri-business concerns. They contribute cheap and docile labour in the sugar plantations of Negros. They are also employed in small manufacturing companies. Although largely unrecognised by the government, their number is estimated at 5.5 million, or about a quarter of the total labour force of the country.

Aside from lack of essential services, the low position occupied by differently-abled children in the scale of government priorities is also made manifest by the lack of pertinent legislation to address their welfare.

### **Children in war**

The government's total war against insurgent groups has not only destroyed millions of properties by fire and confiscations. It has also a long-term impact, which could affect the coming generations, on the millions of traumatised and psychologically-crippled children. In 1990 alone, according to the Children's Rehabilitation Center,

346,789 children fell victim to direct and indirect violations of their human rights as a direct result of search and destroy operations conducted by the military. A large number of these child victims can be found among the so-called internal refugees - people who leave their residences to avoid indiscriminate bombings and other forms of massive military offensives. Countless children have been injured, maimed and killed in the counter-insurgency campaigns of the government.

### **Children of indigenous peoples**

The political armed conflict also affects the lives of indigenous children. Previously, the indigenous peoples of the Philippines resisted foreign invaders in order to defend their ancestral lands and retain their identity. Today it is the government's efforts to tap the rich natural resources of the indigenous people's ancestral domain which are met by stiff resistance. In the indigenous people's warrior culture, it is a valid option to take up arms against the so-called development aggression perpetrated by the government. Aside from losing their cultural identity because of cultural assimilation, indigenous children also fall prey to psycho-social trauma in the same way as other child victims of war. The children of indigenous peoples have long suffered the lack of basic services and are subjected to discrimination by many lowlanders. There is also a lack of culturally appropriate education and other services for them.

### **The government's responses**

The Philippines is among the countries which have already ratified the Convention on the Rights of the Child (CRC). As part of its administrative measures for children and in order to facilitate the operationalisation of the CRC in the Philippines, the government drafted the Philippine Plan of Action for Children (PPAC). The plan outlines the government's targets for children's rights and welfare, including the strategies for achieving its goals. The plan is set to attain its goals by the year 2000.

The basic legislative measures relative to children are the

following:

- a) Section 9 to 13 of the 1987 Philippine constitution, declaring the role of the State in promoting the survival, protection and development of children;
- b) Presidential Decree No. 603 (Child and Youth Welfare Code), codifying the laws on the rights and responsibilities of children;
- c) the Family Code, containing provisions that recognise the legitimacy of a child born by artificial insemination;
- d) provisions relating to the working conditions of minors.

In order to address the present economic and political crises, the government has also embarked on an ambitious plan to bring the ailing economy up to the current status of its neighbouring countries. Starting as a basket-case plagued by 4 to 8-hour brownouts, a huge budget deficit and the burden of a P33 billion foreign debt, the Philippine economy is supposed to metamorphose into a tiger economy by the end of the term of President Ramos. This disturbing juxtaposition between lofty goals and an economy with negative growth has been one of the bones of contention between proponents and critics of the Medium Term Development Plan (MTDP).

### **Efforts of NGOs**

In general, non-governmental organizations (NGOs) have been active in public policy advocacy, human rights protection and promotion, the development of innovative approaches to the delivery of basic services, livelihood assistance and political action. The aim in the short term is to assist in the provision of services urgently needed by children and to effect changes in policy and improvement of the delivery of government services to the people while, in the long term, the goal is social transformation.

For child-focused NGOs, their activities for children can be divided into three general headings: a) early childhood education programmes; b) CEDC - streetchildren, working and prostitute children, children in war, differently-abled children; c) special focus -

maternal and child health, alternative early childhood education, children's literature, community-based children's programmes.

Salinlahi Foundation, Inc. is an alliance of 35 organizations and individuals committed to promoting the rights and welfare of the Filipino child. Its aim is to unite and strengthen the network of various initiatives consisting of people's organizations and institutions responding to the needs and situation of the Filipino child as well as promoting his/her rights.

Salinlahi operationalises its aim to help children through its four programmes. The core programme is the Local and International Networking and Campaigns (LINKS). Being an advocacy centre for children's rights and welfare, Salinlahi conducts campaigns that tackle broad and specific issues affecting children. By launching campaigns and educating the people about children's issues, the alliance hopes to direct government resources and services towards those who need them most. At the same time it also lobbies for the formulation of child-focused or child-specific legislation.

Under the LINKS programme the alliance responds to issues or problems of children, such as individual or massive cases of human rights violations, by sending out urgent action appeals to its members and also to its local and international networks.

The members of the alliance play a crucial part in the campaigns of the alliance, which also involve children.

Children Solidarity Festivals presently take place on a national scale. These festivals highlight crucial issues affecting children on a national level. The entire membership of the alliance actively participates in the planning process, implementation and evaluation. All the members are consulted before the main issues to be tackled by the activity are decided upon. In this manner, all the plans of the members are integrated into the line-up of activities. Each member can also contribute to the other's campaigns more effectively since overlapping of activities is avoided. One area which needs improvement in the coordination of activities is communication. If a way can be found to facilitate electronic communication, which can overcome the immense distances between the members of the network, the effectiveness of campaigns and activities will vastly



improve.

So far, the festivals which have been launched since 1988 have been relatively successful and have shown qualitative improvements in the degree of participation of the alliance's members and also in the kinds of issues that were handled.

Among the media which have been used for the human rights education of children are comic books, slides and books. There have also been some TV spots to familiarise the public and the children with the various rights of the child. So far, the media has been very receptive to carrying articles about children but some sectors of the media have been very insensitive to the plight of sexually abused children. However there have also been some gains in this field.

Some progressive artists have developed songs which help the children to learn about their rights. Workshops with children are also designed to help them understand the conditions and rights of other children, especially those of children in difficult circumstances, and develop the attitudes and skills necessary for the children to work together.

### **Coordination among national, regional and international NGOs**

On the national level, there are presently some attempts to organize a national children's NGO coalition that would coordinate the efforts of the NGOs concerned in the promotion, implementation and monitoring of the Convention. The SALINLAHI is organizing municipal/city, provincial and regional area groups of NGOs and Peoples Organizations (POs) working with children to facilitate local coordination and maximisation of resources.

At the international level, our organization has been active in the formation of the End Child Prostitution in Asian Tourism (ECPAT) campaign, which is organized in the tourist-receiving and tourist-sending countries. We are also coordinating with the Child Workers in Asia, and are a member of the international community Education Association.

As a member of the Philippine Alliance of Human Rights Advocates, we are also coordinating with other sectors and

organizations in the Asia/Pacific region.

At the 1993 UN World Conference on Human Rights, our organization actively participated in the development of the Working Group on the Human Rights of Children and Young People, which was composed of more than 60 NGOs dealing with children and adults. We are presently coordinating the work of this committee, which we hope will become an international network on behalf of children.

### **Other international bodies**

Our organization took part in the UN Working Group on Contemporary Forms of Slavery in 1989, and sometimes sends information on the Philippines to other international NGOs. We hope to form better links with other organizations to build stronger support for institutions and movements for children in especially difficult circumstances.

Aside from local NGOs, there are also international bodies that address the needs of children. The International Labour Organisation has programmes on child labour in the country. UNICEF is deeply involved in programmes pertaining to CEDCs. UNICEF's comprehensive involvement includes the production of materials for public information and education. UNESCO focuses on education and is currently promoting an "Education for All" programme.

### **Efforts in the preparation of the country report to the Committee on the Rights of the Child**

Since last year, our alliance has been very consistent in participating in the meetings called to evaluate the report by the government. We have proposed certain drafts, some of which were accepted. We have also been invited to become part of the committee which will edit the report, but the lack of time has been a major constraint as well as a basic difference in understanding and opinion relating to the philosophy and perception underlying the activity of the government in the implementation of the Convention.

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## PHILIPPINES

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### Laws protecting children

The obligations of the State to protect children and to assure their survival and development are spelled out clearly in the 1987 Philippine constitution and other existing laws, the most noteworthy of which are the Child and Youth Welfare Code and the New Family Code. The Child and Youth Welfare Code, or Presidential Decree No. 603 in particular, defines the obligation of the State, the Church, the community, the school and the family with respect to children. It likewise states the rights and obligations of children. There are others laws, such as the Republic Act 6655, whereby the State undertakes to provide free secondary education to all and Republic Act 6972, which makes the Barangay responsible for the total development and protection of children. In the Philippines, the Barangay is the smallest and most basic political unit of society.

The Philippines did not stop making laws after it ratified the Convention. Republic Act 7600 or the Rooming In and Breastfeeding Act of 1992 provides for the institutionalisation of breastfeeding in all government and private hospitals, clinics and other health institutions. The "Magna Carta" for disabled children which provides special protection for the disabled and the handicapped was also passed after the Convention was ratified. The latest and perhaps the most welcome piece of legislation is Republic Act 7610, now more popularly called the Child Protection Act. This was among the last signed into law by former President Cory Aquino, and it provides for stronger deterrence and special protection against child abuse, exploitation and discrimination. With this law, acts which before were not considered as criminal offenses, especially those relating to child prostitution, sexual abuse, child trafficking, using children for obscene publications and indecent shows and other acts constituting neglect,

abuse, cruelty, exploitation and other conditions prejudicial to a child's welfare, are now clearly defined and higher penalties are prescribed for them. This law likewise contains special provisions for working children, children of indigenous cultural communities, and children in situations of armed conflicts. In addition, it legislated change in remedial procedures which now enable the community, caring institutions and children's rights advocates to be more active in taking action and filing complaints against abusers, exploiters and offenders.

### **Administrative measures**

Protecting children's rights does not mean merely passing these laws. More importantly, and rightly so, is the need to institute mechanisms for their enforcement and implementation, for it is not the paper but the actual work translated into programmes and service delivery which will improve and develop the situation, making it safer for our children to live.

An important measure in this area is Memorandum Order No. 92-010, issued by the Department of the Interior and Local Government (or DILG). In this memorandum, the Philippine National Police (PNP) and the local police were instructed to set up child and youth relations sections (CYRS) in various police stations all over the country. In places where a section cannot be set up, as for example where police stations lack personnel, it will be sufficient to designate an officer as the child and youth relations officer (CYRO). The CYRS and CYRO's role is to respond to and deal with cases, reports and complaints of child abuse and exploitation and other violations of children's rights. They also have the responsibility of dealing with children and minors who are or may be arrested by law enforcement officers, and especially of interviewing them or carrying out the investigation. The CYRS or the CYRO is likewise instructed to work closely and coordinate with the social workers assigned to each of their localities. A manual was prepared by the National Project on Street Children; this manual contains instructions and guidelines to police personnel on the proper way of dealing with children during interviews and investigations so that they will not be further

traumatized by their experience, which is very usual in many of the cases of child abuse, neglect and exploitation.

Aside from what has been discussed previously, there are also a number of executive orders, memorandum orders, and even memoranda of agreement between government offices and non-governmental organizations dealing with the delivery of services to children and minors, especially those in situations of armed conflict. There is Memorandum Order No. 398, issued by the President, which contains guidelines on the delivery of goods and services to areas where there are ongoing military operations. The various departments of government, local government, social welfare, national defence, including the armed forces of the Philippines, and the Philippine National Police were instructed to facilitate the free flow of goods and services to the countryside even during counter-insurgency operations.

In addition to all these laws protecting children's rights there are a number of laws which have been in Congress for some time, but are very significant insofar as children's rights advocates are concerned. Foremost among these are the bills proposing the re-establishment of juvenile courts to handle all cases concerning violations of children's rights and other issues which concern or involve children. If laws protecting children's rights are to be enforced and to be truly meaningful, a venue should likewise be provided for the redress of these rights. The absence of these special courts for children has hampered the implementation of laws and procedures which are meant to benefit children.

The juvenile and domestic relations courts existed and functioned until 1980 when Batasang Pambansa, the then legislature, passed a law reorganizing the judiciary upon the prompting of Mr. Marcos. With the reorganization of the judiciary all special courts, including the juvenile and domestic relations courts, were abolished. All courts were now transformed into regional trial courts. What the Supreme Court did in response to the clamor for the return of these special courts for children was to designate some courts to handle children's cases. This only became an added burden to these courts, which had to deal with their regular share of criminal, civil and other cases.

The attitude of Congress and the Supreme Court towards the campaign for the restoration of the special courts' is one of indifference. The special courts are perceived to be unnecessary, coupled with perception that judges are or will be reluctant to be assigned to these special courts because it will prejudice their chances for promotion since she, or he, will be limited to handling only cases concerning children and other domestic matters.

We have also legislated for special procedures for children. However, most of the time they remain unimplemented because of resistance, reluctance or just plain ignorance on the part of the judges, the prosecutors and the practising lawyers. The social welfare department, with the cooperation of UNICEF, has conducted seminars for judges, lawyers and prosecutors regarding these laws and procedures, but they have so far remained inadequate. However, the biggest problem has been one of attitude - some just do not believe that children, most especially youthful offenders, should be treated in a manner different from the way one would ordinarily handle other cases.

### **Government response**

After the General Assembly of the United Nations adopted the Convention on the Rights of the Child on 20 November 1989, various government agencies and non-governmental organizations and child advocates in the country campaigned for its ratification by the Philippine government. On 26 July 1990, before a year was over, the government had ratified the Convention. Thereafter, the efforts of the various government organizations and NGOs were refocused, this time to work for the Convention's implementation. In response to its ratification of the Convention, plus its commitment to the declaration it signed at the World Summit for Children (also held in 1990), the Philippine government formulated the Philippine Plan of Action (PPAC). The PPAC outlines programmes and services aimed at the protection of children and their rights and welfare. It sets goals and targets, and aims at achieving these targets by the year 2000; this is the same target as set by the Ramos government in its "Philippine 2000" programme, which aims to transform the Philippine economy

and set it on a par with the other newly industrialised economies in the region. The PPAC targets were incorporated into the Medium-Term Philippine Development Plan.

### **What the organization is doing**

The Philippine section of the Defence for Children International has been active in public advocacy, lobbying and networking. It has continuously conducted public and group discussions on children's issues and concerns in order to popularise ideas and concepts on the protection of children's rights. We have also undertaken case studies on youth offenders and have been carrying out ongoing research on the sale and trafficking of children in the country.

Recently we have been focusing more on children's rights and legal rights education for both children and child advocates. We have likewise given some basic paralegal education and skills training to child advocates and street educators in order to help develop a more efficient and accurate system of information gathering, investigation and documentation of child abuse and other violations of children's rights. We are also involved in designing education modules for children's rights awareness for the community, and for children. We hope that by the end of this year we can come up with a primer for children, which would contain basic information on children's legal rights, what they can do if their rights are violated, and where to go in case they want to ask for assistance. Hand in hand, of course, goes the need to develop an extensive network of lawyers, doctors and other professionals, as well as to coordinate efforts by governmental organizations and NGOs so that we can effectively respond when the children come to us for help.

As far as coordination with the other organizations is concerned, we continuously network and work together with national non-governmental alliances (such as Salinlahi), and coalitions which are formed on specific issues and concerns. Internationally we have been one of the active sections of DCI, a movement for children's rights, with our international secretariat based in Geneva. Our national section has not so far directly taken part in UN activities. However, we do perceive the need to be more familiar with, and actively use,



the available UN mechanisms to effectively respond to the growing issues and concerns of children. We must think of everything to be done to make this world a better place for our children and we must do it now. That is the best we can do and I think that everyone participating here feels the same way.

## SINGAPORE

*Maria Swee*

Infant Jesus Convent Orphanage and Home  
for Abandoned Babies

### Facts and figures

Position:	Approximately 136.8km north of the equator.
Total land area:	639.1 sq km.
Population:	2,762,700 (1990 census).

Approximately 77.7% of the total population is Chinese, 14.1% Malays, 7.1% Indians, and 1.1% persons of other ethnic groups. Residents below 15 years of age formed 23.2% of the population.

Rising standards of living, health and hygiene have reduced the infant mortality rate to 5.5 per 1000 live births in 1991, compared with 11.7 in 1980, 20.5 in 1970 and 34.9 in 1960.

Language and literacy: The official languages of Singapore are Malay, Chinese, Tamil and English. Malay is the national language and English is the language of administration. Mandarin is being used increasingly among the Chinese in place of the main Chinese dialects. The 1990 census disclosed that the general literacy rate was 90% in 1990.

Standard of living: The labour force comprised 64.8% of the population aged 15 years and above. The per capita indigenous GNP was \$20,031.

Religion: The 1990 census indicated that 86% of the population professed some religious faith or spiritual belief. The major religious groups are Buddhists, Muslims and Christians.

## **Situation of children**

The immediate influences on the child are home and school. The child's family is usually made up of two parents, with one or two siblings. About 85% of today's families are of the nuclear type, although there are still households of three generations living together. The family is usually the occupant of a Housing and Development Board (HDB) flat. Almost 87% of the population of Singapore live in such flats, which are developed and built by the HDB. Since 1960, 675,000 such units have been put up.

The small family size is attributed in a large part to the success of the family planning campaigns of the 1960s and 70s, when the population growth rate was high and Singapore faced an uncertain economic future. However, the success of the family planning policies reversed the fertility trends so rapidly that, by 1984, the population growth rate was 1.1% per annum, in comparison with 5.8% per annum in 1958. The dramatic decrease in population growth led to some changes in family planning policies in 1987. New measures to remove the old penalties targeted at the third child were introduced, and to some extent, new incentives were provided for the fourth child. Between 1988 and 1991 there was an average estimated rate of increase of 1.75% in the population.

The quality of life of the children is determined by the social situations of their parents, especially education and employment. In 40% of family units, both parents go to work even though the father is still considered the main breadwinner. The labour force participation rate for married women was 43.8% in 1992. The increase in the rate of working mothers follows a worldwide trend of women's participation in all fields of human endeavour. With both parents at work, one of the biggest problems faced by families is the care of their children - both the very young and school-going children.

The need for child care for young children (0 to 6 years) has resulted in the phenomenal increase of child care centres in Singapore in the last eight years. According to a government official (MCD), there were 326 such centres at the end of May 1993, while the number for 1984 was 50 and for 1991, 295. Subsidies are granted to

working parents who use such centres. However, the present number of centres is still insufficient to cater to the number of children in the 0 to 6 year age group. On the basis of the 1990 population census, while there were 224,000 children in the 0 to 4 year age group, (Singapore Institute of Labour Studies, 1992) there were only 19,294 child care places in 1991 (MCD, 1991). The Child Care Centres Act (1988) was established and implemented by the MCD to license, control and access centres for purposes of inspection. The Child Care Regulations (under Section 19 of this Act) serve to enhance the status of centres. It wants these centres not to be seen as simply providing custodial care, but as places where the needs for developmental growth and the early education of the children are met.

Great numbers of school-age children return home from school to self-care. Self-care in unsupervised, lonely and responsibility-laden situations can have a negative impact on the social and emotional growth of children. Left on their own, these "latchkey" children ( they are called such because they carry the key to their house in their pockets) are often free to 'run wild' in the neighbourhood. As a result, many are lured into joining gangs; often, under peer influence, they start smoking at a early age. Children under 18 are forbidden by law to purchase cigarettes or smoke. Smoking often leads them to trying out drugs, followed by petty thievery and lack of interest in school, all of which eventually results in their dropping out of school. Usually such children are already poor performers in school and are discouraged by a school system that rigorously favours the achievers and the elite. The majority of these children are in their teens and usually hang out in video games parlours, snooker halls and shopping complexes.

Another means by which the child care problem is temporarily relieved is the employment of domestics from non-traditional sources. In the late 70s, the Ministry of Labour approved the hiring of Filipinos, Sri Lankans, Indonesians and Thais as maids in Singapore households. The advent of these maids as the primary care-givers of children, often very young children, raises several questions about the differences in culture, value system, and especially language, since some children are left for long hours with their maids.

## **Medical care**

Maternal and Child Health clinics offer preventive health care for mothers, infants and pre-school children to ensure that they receive proper health care and that intervention, if needed, takes place early. The School Health Service also provides regular checkups for school children. These services provide comprehensive preventive measures to safeguard the health of the child. Whereas in the past malnutrition and infectious diseases were commonly found in children, our present woes are those of obesity and poor vision.

## **Education**

Education is not compulsory in Singapore. However, it is perceived as an important and necessary aspect of a child's life. Parents see education as a means of securing their own and their children's future. The government views education in terms of economic needs. The education system has gone through such vast changes in the last ten years that it is often difficult to keep up with all of them.

Pre-school education is left mainly to the private sector. It is hoped that the primary school will equip pupils with a strong foundation in English, the mother tongue (Mandarin, Malay or Tamil) and mathematics. Children are expected to be effectively bilingual. Pupils are channelled at the end of their fourth year of primary school into one of three streams. The majority of children will normally be channelled into the second stream, although it is the hope of most parents to see their children in the top stream. The streaming exercise puts great pressure on children to perform, as parents are anxious for their children to do well. Teachers and principals are equally concerned, as the reputation of their schools is at stake. The children are therefore at the mercy of parents and teachers who load them with extra school work. Often, examination papers are set one or two levels above the children's present standard as a way of challenging the children and also to pick out the more academically endowed and inclined. All this pressure on the young child to perform means that the child has very little time for leisure activities and for peer interaction.

## **The poor**

Singapore has achieved significant growth in the last 28 years of independence. Today it enjoys a per capita indigenous GNP of \$20,031 (Singapore Yearbook, 1992). Yet, statistics from the Population Planning Unit show that there are approximately 38,000 households living below the poverty line. These households have a monthly income of less than \$510.65. This figure has been established by the Committee on Destitute Families as the Minimum Household Expenditure for a four-person household living in a one-room flat. (The Minimum Household Expenditure is based on the consumption patterns of households for basic items as determined by the Household Expenditure Survey conducted by the Department of Statistics once every five years). Even with a welfare subsidy, these households, often with young children, are unable to meet their basic needs for food and shelter (Goh, 1991). Many of these families receive various levels of aid from voluntary welfare organizations.

The Ministry of Community Development runs a Family Life Education programme, focusing mainly on parent education. Preventive work is aimed at strengthening family life and providing support for families going through difficult phases so that serious dysfunctioning can be avoided. Family Service Centres have been established to provide support programmes for families in the community. Most of the families using this service are from the lower socio-economic group. As these families require rehabilitative and remedial work urgently, the scope of preventive work is still limited. There are 16 voluntary welfare organizations, affiliated to the National Council of Social Service, that are currently providing services to disadvantaged families.

Recently, the government announced a financial package to help poor families. Several conditions must be met before a family can qualify for the scheme, which includes a housing grant and bursaries for school-going children:

- families must be intact. A family means husband and wife and one or two children of the wife;
- either the husband or the wife must be a Singapore citizen;

- the wife must be below the age of 35;
- neither husband nor wife may have N or O levels (educational level);
- husband and wife must be earning less than \$750 each at the time of application.

Called the Small Families Improvement Scheme, it has been estimated that up to 9,000 families will qualify for it (Straits Times, 24.8.93).

### **Laws and regulations**

The Children and Young Persons Act and the Women's Charter are legislation to protect the interests of minors in society. Under the Children and Young Persons Act, a child is defined as below the age of 14, while a young person is stated to be between the ages of 14 and 16. The Act spells out offences against children, such as child abuse, exploitation, begging and use of children in illegal activities. Protection accorded to the child includes the removal of the child to a place of safety or approved home, statutory supervision or placement of the child with a suitable person. The Act also provides for the care of children who are beyond parental control and concerns itself with the handling of juvenile offenders. In all these cases, it is stated that the welfare of the child is of paramount importance.

The Women's Charter is a legislative instrument to protect women and girls, especially those who are in moral danger.

Child labour is not a major problem in Singapore. There are individual children who help out in family businesses and trades. The employment of children and young persons is provided for in the Employment Act (1976, amended 1977). No child under the age of 12 years may be employed. Children of 12 and above may be employed in light work but not in industrial undertakings. However, this restriction does not apply to children and young persons under apprenticeship schemes approved and supervised by the Ministry of Education and the Vocational Industrial Training Board. There are conditions governing their hours of work, such as granting a child a 30-minute break every three hours and limiting employment to not

more than six hours in any one day; young persons have a 30-minute break every four hours and work no more than seven hours in any one day.

The other protective provisions are that no child shall be employed as a workman upon any vessel unless under the personal charge of a parent; no underground work is allowed for any child or young person; no child or young person is to be employed in work involving machinery in motion or on live apparatus not effectively insulated; night work is forbidden. The employment of young persons in an industrial undertaking has to be reported to the Commissioner.

### **Infant Jesus Convent Orphanage and Home for Abandoned Babies**

Mission statement: The Infant Jesus Homes and Children's Centres wants to welcome the poor, weak, exploited, neglected and rejected child. Through its work with these children in the various Centres, it aims to help them to grow into confident, self-directed and dignified individuals.

The Infant Jesus Centres have a long history in Singapore, commencing in 1854 with the education of girls and the care of abandoned babies in early days. The education of girls took firm root and the schools grew to become establishments in themselves.

The needs of abandoned babies and young girls also grew and residential facilities were established for them. However, the large institutional set-up has evolved over the years and a self-evaluation process by the organization has led it to make changes that are more responsive to the situations and needs of the children in the society we live in.

Today, there are four Centres catering for children.

- |                  |   |
|------------------|---|
| Ang Mo Kio Home: | community home for women brought up by the Convent since childhood. These women are mostly of middle and old age. |
| Clementi Centre: | children's home;<br>out of school hours care.   |



Galilee Centre:                   neighbourhood centre for children and families.

Marsiling Centre:               drop-in and tuition centre for children.

Apart from the Ang Mo Kio home, the other three centres cater for children. Most of the children come from disadvantaged families with low incomes and they usually face chronic multiple problems, such as poor physical or mental health, physical or mental disabilities, poor socialisation skills and break-up of the family. It is also common to find these families, especially the head of household, suffering from behavioural or personality disorders, such as drug or alcohol abuse.

Basically, two beliefs underpin the work we do with the children and their families. Firstly, we believe in the individuality and uniqueness of each child. She/he is viewed in her/his own right with all the implications of the uniqueness of her/his situation- family, school, environment, race, religion, culture. Secondly, we believe that participation is the basis on which all who come to our centres find their place and meaning in their involvement and commitment. As such, children, staff and volunteers take an active part in the running of the different centres; all have a say in the types of programmes they want. Some fund-raising projects are run by parents and children, e.g. church canteen, newspaper run, project to make and sell recycled paper.

### **Programmes**

The basic components of our programmes are education and care. The children and the families we work with are economically poor and socially disadvantaged. We try to provide them with a nurturing, caring and secure environment. In many cases it means providing the children with a hot meal, usually lunch. It also means providing them with a place and a conducive environment to do their school work.

By education, we do not simply mean helping the children cope with their school work and enabling them to pass exams. Although this aspect is inevitable, we see the formation of the human being as a

greater challenge to our work. All sorts of occasions - birthdays, ethnic, cultural and religious celebrations, national celebrations, international events and happenings - are the raw materials on which we try to base our educational programmes. One of the most positive signs we can see among the children and the adults is the good relations between the different races. The other is the gradual and growing awareness of the world around them. For example, some have become very concerned about recent events concerning street children in South America; by sharing the journal *Child Workers in Asia*, the children become aware of the harsh conditions under which children in nearby countries work.

### **Reporting violations**

So far, we have had little success, especially as far as reporting on child abuse or child sexual abuse is concerned.

In one case the perpetrator was brought to court and given a stern warning for physically abusing her child. We were not allowed to follow up the case.

In a few abuse and sexual abuse cases we could not get doctors to confirm conclusively that there had been abuse. Without evidence we cannot prosecute, even though we have strong suspicions of abuse.

## Sri Lanka

*Mohammed Mahuruf*  
Protecting Environment and Children  
Everywhere (PEACE)

### Background

Sri Lanka (Ceylon) is a tear-drop shaped island situated at the southernmost tip of the Indian sub-continent. With a recorded history of over 2,000 years, her people, numbering 17 million, speak three main languages, Sinhalese, Tamil and English, and belong to four major religions; they are Buddhist, Hindu, Muslim and Christian. This beautiful tropical island was once likened to Paradise. Unfortunately, however, successive colonial invasions, a bloody insurgency in 1971 and a year of near anarchy in 1989 in the South, sporadic ethnic riots since 1958 and a fierce decade of separatist war in the North and East, especially in the aftermath of the July 1983 ethnic riots, have taken their toll on the country and its people.

### Situation of children in Sri Lanka

The situation of Sri Lanka's 7 million children (estimate) is discussed below.

#### 1 Health and nutrition

Infant mortality remains fairly high, at 19.3 per 1000 live births and 34 per 1,000 for those under five years. Tea plantation areas and urban poor areas have higher levels. Poor maternal nutrition, age of marriage below 20, inadequate birth spacing, and poor weight gain during pregnancy lead to increased risk for the unborn child. Foetal malnutrition and immaturity (54%), respiratory and other infections, diarrhoea and parasitic disease are the other causes in order of importance.

Even though it is claimed that universal child immunisation with BCG, DPT, polio and measles vaccine has been achieved, a resurgence of malaria and encephalitis has recently affected children in epidemic proportions in certain districts. Moreover, children in urban areas now face a new threat to their lives, dengue and haemorrhagic fever.

The Health and Demographic Survey of 1987 (not carried out in the war-torn North and East) showed that 27% of children between the ages of three months and 36 months are chronically undernourished and 13% of the same age group are acutely malnourished; 25% of the babies have low birth weight. A 1988 survey of school children aged seven to ten years in Colombo showed that 45% of boys and a little over 45% of girls are moderately malnourished.

## 2 Education

The Report on Early Childhood Care and Education states that the degree of preparedness shown by a child at the point of entry into primary school is low. Only about 18% to 20% of pre-school age children are enrolled in pre-school institutions.

It is generally accepted that almost all children enrol in the primary cycle at some time, yet about 14% of those aged five to 14 are out of school at any one time. 'Drop-outs' are in the range of 4.2%; they are mostly poor children.

A Ministry of Education survey shows that the problem of illiteracy is particularly high among children in urban slums and in the plantation sector. These children either help their parents to look after the younger members of the family or are engaged in income-earning activities.

There are 380 one-teacher and 770 two-teacher schools in Sri Lanka.

## 3 Children in difficult circumstances

### Disabled children

The care and education of children with special disabilities, those who live on the fringes of society or who have special

or newly-emerging problems, have been neglected. These children include disabled and abandoned children, and those affect by civil conflict and the migration of their mothers for employment.

It is estimated that at least 4% of all children are disabled and that 47% of the disabled population is under 14.

#### Child labour

It is estimated that at least 500,000 children are employed, more than 75% being from the plantation and urban sectors. The major cause for child labour is poverty. Since most of them work in the informal sector, they are unprotected by the law. A considerable number are in domestic service in the homes of the more well-to-do. (It is forbidden under the law to employ anyone less than 12 years of age, but this is not rigidly enforced).

In recent times children have also been used as camel riders in certain Middle Eastern countries. The activity as practised has been found to be physically and mentally injurious to the children.

#### Street children

Yet another group of children, estimated at nearly 10,000, live on the streets with or without their families. This group includes those who have left their homes because of parental ill-treatment and the children of street families. At present 156 street children are in custodial care under the Vagrants Ordinance in detention homes.

#### Child prostitution

An off-shoot of the phenomenon of street children and the early involvement of children of poverty groups in economic activities is the prevalence of child prostitution.

Tourism has helped increase the problem. The decade 1980 to 1990 saw a sharp rise in child prostitution. Sri Lanka is often advertised in Western countries as a paradise for gays and paedophiles. Unofficial figures are nearly as high as

30,000 for boy prostitutes. Figures for girl prostitutes are not available and less is known about prostitution in the under-15 age group.

#### Children in trouble with the law

Most juvenile delinquents (80%) come from similar backgrounds of economic disadvantage.

#### Abandoned, destitute and orphaned children

With increased poverty and unemployment and the weakening of extended family structures, the number of abandoned, destitute and orphaned children has also risen. Another factor for the abandoning of children is the social stigma attached to unwed mothers. Children found roaming and homeless without visible means of support, or child beggars, as well as abandoned infants, come into this category. A relatively new phenomenon is the increased number of adoptions of these children by foreigners without proper regulatory mechanisms. This aspect of adoption has led to the growth of 'baby-farms', where babies are sold to foreigners by unscrupulous private individuals and institutions. A total of 11,862 babies have been exported to foreign countries, largely in the West. Of this only 911 were approved by the relevant authorities.

#### Children in situations of armed conflict

In recent years Sri Lanka has experienced various cycles of violence. This has been the case especially in the past ten years and the conflict continues to take its toll on an estimated 487,000 children; 186,000 of them are living in 470 welfare camps in 14 districts, mainly in the North and East. This category includes:

- children suffering from emotional and psychological trauma as a result of exposure to armed conflicts;
- orphaned and abandoned children;
- children with one parent;
- children suffering from under-nutrition;

- disabled children;
- children deprived of schooling.

A recent phenomenon has been the recruitment of children as soldiers. The separatist militants have been recruiting children as young as ten, and now the government has begun recruiting 17-year-olds to fight.

#### Children of migrant workers

A Plan of Action for the Children of Sri Lanka (1991) recognises that the child, for the full and harmonious development of its personality, should grow up in the family environment. However, the migration of workers to the Middle East, especially mothers from low-income families, has affected children; 1986 figures indicate that the number of children left behind by married men and women was approximately 400,000. Almost half of these were under the age of ten and some 19,000 children were estimated as being even less than a year old. Unfortunately, no evidence is available to assess the impact of such migration on children.

#### 4. The legal system

The legal system of Sri Lanka mirrors her history as well as her ethnic and cultural diversity. Four legal systems are applied: to the Sinhalese in the central parts of the island Kandyan Law applies, to the Tamils of the North and East the Tesawalami is applicable, to Muslims, Islamic law, and more recently Roman-Dutch law has been introduced and has given rise to the parliamentary system of government and legislation.

Therefore, in Sri Lanka, several laws have been enacted to protect children's rights. A total of not less than 59 Statutory Provisions relating to children are found in various enactments. But "many of these laws are often confined to the statute book. They are hardly implemented," according to the Lawyers for Human Rights and Development (Report on Seminar, 1989). The report continues: "These laws are hardly adequate to protect the interests of children...[and] in

view of the recent increase in child abuse, child labour, child-trafficking etc., there is a real need to enact new laws to prevent such atrocities against children.”

## **Government and NGO response to the above problems**

### **1 Government programmes**

The Constitution of the Democratic Socialist Republic of Sri Lanka declares that “The State shall promote with special care the interests of children and youth so as to ensure their full development, physical, mental, moral, religious and social, and so protect them from exploitation and discrimination;” it continues: “Whereas the family is the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, it should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.”

Accordingly, a number of welfare programmes have been initiated and maintained at State expense through various ministries, departments and institutions to fulfil the above. Such programmes are discussed below.

#### **Foster parents scheme**

This programme encourages well-wishers (local and foreign) to donate regularly, primarily towards the education of the child.

#### **Children’s homes**

Seven State Receiving Homes have been established to care for abandoned, destitute, orphaned and disabled children. Funding (Rs 150.- to Rs 450.- for disabled and Rs 100.- for other children) is also provided by the State towards the cost of caring for children in the 148 registered private homes and the 72 registered homes for the care of children with disabilities.



### Certified schools

There are four certified schools and four remand homes for the purpose of rehabilitating children in trouble with the law.

### Janasaviya - Poverty Alleviation Programme

Aimed at ending consumption subsidies within a given time, the programme provides that each household will receive a monthly cash payment of Rs 2,500 over a period of two years. Rs 1,458 as savings (optional) and Rs 1,042 will be compulsorily deposited for the full two-year period. This compulsory saving will then be given to the household as capital to start an income-generating venture and thus, it is hoped, help them move away from their dependence on subsidies. About 2.3 million households are to benefit from this scheme.

### Free education

The existing law makes provision for the framing of regulations on compulsory schooling for five to 16 year olds. There are 10,042 government schools and 546 privately-managed schools for 4,155,035 and 129,131 students respectively. Free school books, uniforms and a midday meal are provided. The government allocates 7.9% of its total expenditure for education (or 2.3% of GDP).

### Free health and medical facilities

There are nine different types of general health institutions ranging from the General Hospital in Colombo to 278 central hospitals throughout the island. Specialist hospitals exist for leprosy, fever, cancer, paediatrics, obstetrics, psychiatry, and thoracic and eye problems. In all there are 4,089 doctors. Health expenditure represents 5.4% of the total government expenditure (or 1.6% of GDP).

### Non-formal education

This system provides need-based learning experiences outside the formal school system; 375 such centres are operating in schools and places of religious worship.

### Other programmes

The government also supports a number of programmes such as the provision of supplementary nutrition to underweight children, vocational training for school drop-outs, the provision of dry rations to those living in refugee camps, housing, etc.

## 2 NGO programmes

Sri Lanka has over 2,500 NGOs operating throughout the country. About 60 of these are active at national level, while the rest function at district and village level. Over 90% engage in activities related to social and community development, many of them focusing on maternal and child survival and development.

One unfortunate aspect of NGO activity has been the allegation that "no framework has been established for monitoring the activities and funding of NGOs and some of the funds received from foreign sources or locally generated are allegedly being misappropriated and/or being used for activities prejudicial to national security, public order and/or economic interests and for activities detrimental to the maintenance of ethnic, religious and cultural harmony among the people of Sri Lanka."<sup>14</sup> Subsequently, on 14 December 1990, the President of Sri Lanka appointed a Commission of Inquiry on NGOs.

All aspects of child welfare activities are addressed by various local and foreign NGOs. Some of the major programmes are described below:

### Children's homes

There are 148 homes for the care of abandoned, orphaned and destitute children. Another 72 homes are run for disabled children. The exact population of these homes is difficult to determine, as different surveys produce various figures. A profile of child development in Sri Lanka (1991)

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14 The terms of reference of the Presidential Commission on NGOs.

puts the number at 6,892, although it identifies the number of abandoned and orphaned children at 42,000. The Rädä Barna study puts it at 7,146 children from 142 identified homes. A number of unregistered homes also exist.

Other programmes include:

- pre-school and day care programmes of children under five;
- non-formal education and vocational training programmes for school drop-outs;
- health and nutrition programmes for mothers and children;
- income-generating and credit programmes;
- community-based rehabilitation for disabled children;
- child sponsorship programmes.

Water, sanitation, housing, counselling, family planning, relief rehabilitation and other programmes are carried out by various NGOs.

A few of these NGOs are involved in monitoring the condition of children. They actively lobby the government when needed and bring to its attention the need for action; they also create awareness among the general public.

### 3 The PEACE programme

PEACE, the local arm of ECPAT (End Child Prostitution in Asian Tourism) began in 1990. It is actively involved in creating awareness among all levels of society of the ill-effects of child prostitution; influencing national policy for the protection of vulnerable children; preventing children from being attracted to or forced into prostitution; and educating persons who could be of assistance to the children.

Some of its major achievements are:

- as a result of representation, legislation against child prostitution is now being introduced in the parliament;

- the Ministry of Social Welfare has decided to organise preventive programmes and rehabilitate child prostitutes;
- a community-level anti-Aids task force has been established under the chairmanship of a Deputy Inspector General of Police;
- the Department of Police has established a "Children's Desk" at its headquarters;
- information is provided to countries sending tourists through our international network, thus helping those countries draw up legislation against paedophiles who commit crimes against children in other countries;
- preventive programmes are being conducted for street children and beach children, and counselling programmes for mothers in high risk areas;
- awareness is being created and programmes conducted to celebrate the adoption of the signing of the Convention on the Rights of the Child annually on 20 November.

### **ILO and UNICEF Programmes**

The ILO is assisting the government in drawing up legislation to combat child labour.

UNICEF plays a very major role in the welfare of the children of Sri Lanka. A comprehensive programme of cooperation between UNICEF and the Government of Sri Lanka has been drawn up for the period 1992 to 1996. The major sectors covered are nutrition, health, education, water and sanitation, specially targeted children, area-based development, emergency relief and rehabilitation and social mobilisation. The proposed budget for the above programme is US \$ 36, 847 million.

Universal immunisation was achieved through WHO and UNICEF programmes implemented with the help of the government.

NGO child welfare programmes have also been actively supported by UNICEF.

## **Human rights education material for children**

Limited material is produced and developed on human rights in general and only one document produced by UNICEF on the rights of the child is available locally. Unfortunately the text and format are too technical and not attractive to children.

## **Coordination of activities among NGOs**

Not much coordination takes place even though certain umbrella organizations, fora and consortiums exist. Each NGO, depending on its status as a local, national or international organization, has its own internal coordination of activities.

## **Link with the UN**

PEACE is already working closely with UNICEF in publishing literature, organizing workshops and seminars, conducting counselling programmes and providing advice and support for activities.

## **What the ICJ can do**

Since PEACE is essentially involved in creating awareness, lobbying and influencing decision-makers both locally and internationally, we would expect the ICJ to use its good offices to support these efforts.

## **Rights of the child**

Sri Lanka ratified the Convention on the Rights of the Child on 26 April 1991, but its report to the Committee on the Rights of the Child has not yet been submitted as it is still under preparation by the Ministry of Foreign Affairs. Other than UNICEF, only government departments are involved in the writing of the report.

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## **Thailand**

*Kamalinne Pinitpuvadol*  
Child Rights ASIANET

### **Introduction**

About 40.7% of the Thai population are children and young people between the ages of 0 and 18. As of 1992, the total population numbered 57.9 million, of which 23.16 were children and young people (0 to 18 years old). The number of children in Thailand is expected to increase quite sharply throughout the 1990s in relation to the increase in the birth rate.

Many Thai children live in rural areas. Many children, particularly those of disadvantaged or lower income groups, do not have sufficient access to basic services, resources and infrastructure to enable them to realise their fullest potential. Their major problems are malnutrition, accidents and injuries, frequent infections, diseases and delayed development.

### **Activities of the Thai government in relation to children**

The Thai government acknowledges that early childhood development is in the interest of the country, and thus political commitment exists. The Child and Youth Development Plan has been set up within the framework of the National Economic and Social Development Plan (1992 to 1996). In order to implement the Development Plan for children, the National Youth Bureau has drawn up guidelines for implementation, focusing on six major topics: physical and mental health, nutrition, intellectual and basic skills, vocational preparation, the social, cultural and moral areas, and knowledge of the Thai government and politics.

In the early 1990s, the first National Assembly on Child Development was convened in Bangkok, with the adoption of the

National Declaration on Children. This Declaration ensures that the specification of basic minimum needs and service guidelines guarantee children's rights and are used as a framework to pool resources for implementation of child development programmes.

In Thailand there are no comprehensive laws and regulations on children's rights and the definition "child" varies according to different laws (varying up to age 18). Laws which have an immediate impact on children tend to be of a punitive kind, as for example laws which punish parents for neglect of their children, such as Revolutionary Announcement No. 294, and misbehaviour on the part of children, as for example Revolutionary Announcement No. 132. Various laws aim to protect children, but they suffer from weak law enforcement or bureaucratic obstacles, as for example the Criminal Code and Prostitution Suppression Act 1960, the Adoption Act 1979 and Revolutionary Announcement No 103, concerning child labour.

At present there are various draft laws pending which aim to promote greater protection of children, such as a new law to prevent the sale and trafficking of women and children, and a draft law revising various Revolutionary Announcements affecting children (such as R.A. No. 294, 132) so as to promote a preventive and rehabilitative approach rather than a punitive approach. Some NGOs and independent experts have recently proposed the idea of a child and youth code and/or a comprehensive statute on child protection.

At the international level, Thailand ratified the Convention on the Rights of the Child in March 1992, and signed the World Summit Declaration earlier on.

### **Major problems of children in Thailand**

Serious problems affecting Thai children include child labour exploitation, child prostitution, various types of child abuse and the phenomenon of children being abandoned and living on the streets.

The report entitled *Children in Especially Difficult Situations (Thailand)* cites a number of interrelated factors which contribute to the increasing incidence and severity of these problems: "rapid population increase, poverty and economic pressure, breakdown in



family relationships, insufficient coverage by preventive, curative and rehabilitative services, and value changes."

### **NGOs working on children's issues**

The well-being of Thai children is the focus of a large number of NGOs in Thailand.

At present there are more than 300 national and international NGOs working at both the local and national level, in all areas of importance to children, such as health, education, welfare, the law, and water resources and environmental sanitation. They are encouraged by the Thai Government.

Various NGOs focus on activities concerned with particular problems of children in especially difficult circumstances, as for example, Child Workers in Asia (child labour), CHILDHOPE (street children), and the Centre for the Protection of Children's Rights (CPCR) (child prostitution).

### **Conclusion**

In order to combat the problems faced by children in Thailand, it is necessary to link together measures of prevention, protection and rehabilitation.

In the area of prevention, action should depend upon effective inter-disciplinary anti-poverty strategies, access to improved information flow, education, community consciousness-raising and mobilisation, satisfaction of basic needs, occupational opportunities and alternative forms of employment of families.

In regard to protection, there is a need for more effective laws and regulations and their implementation at the national and local level. Better laws and law enforcement are also a key to short-term measures which can have instant impact, granted the necessary political and social will to make it exist.

On the issue of rehabilitation, more effective remedial action should be taken to help children who are abused and exploited. This

may include legal remedies, such as prosecution of abuses, coupled with legal aid and assistance, and/or socio-medical remedies such as hospices, counselling and other support facilities.

These efforts should alleviate the increasing plight of Thai children in difficult situations and guarantee a better life for children in Thailand.

## THAILAND

*Wassana Kaonoparat  
Thitipong Geenupong*

Centre for the Protection of Children's Rights(CPCR)  
Foundation for Children

*His name is "Today"*

*We are guilty of many errors and many faults, but our worst crime is abandoning the children, neglecting the fountain of life. Many of the things we need can wait; the children cannot. Right now is the time his bones are being formed, his blood is being made and his senses are being developed. To him, we cannot answer "Tomorrow". His name is "Today".*

Gabriela Mistral,  
Nobel Prize-Winning Poet (Chile 1945)

Children have very little experience in the way of living. They need love and care from people close to them. If adults neglect this role and duty, children are likely to be faced with problems. In the past, problems involving children have often been related to malnutrition or to being orphaned. At present, however, problems that affect children's minds have begun to cut a deep wound in society. These problems concern homeless children, ill-treated children or children suffering from sexual abuse and will adversely affect the children's physical and mental condition to a greater or lesser extent. The figures reflecting children's problems do not seem to decline and the figures, as shown below, are startling.

	No. of children
Malnourished children aged 0-14	1,030,000
Children without midday meals	1,200,000
Children without birth certificates	

or nationality	10,000
New-born infants abandoned per day	5
Death of children aged 0-15	48: 1,000
Disabled children aged 7-12	51,000
Homeless children	10,000
Children below the age of 18	
employed in labour	1,112,500
Children in slums	100,000
Children regularly shifting from	
place to place with parents	42,000
Child prostitutes	30,000 - 800,000

Consistent efforts have been made to solve these children's problems, but the intensity of the efforts depends on the severity of the problems and the policy of each government. In 1992, a number of efforts were made by the government and the private sector. In the tenure of the Anan government, more policies were adopted to provide midday meals to poor school children in primary education classes, and to initiate a project for the primary education of children who have no birth certificates, homeless children or children in border areas. Further, a bill was passed to allow children to acquire nationality on the basis of the mother's nationality. The present government, headed by Chuan Leekpai, has also placed emphasis on policies dealing with juvenile labour and juvenile prostitutes. Nevertheless, the State has continued to treat children's problems as a secondary matter. This was evident in the Anan government's approval of a budget of only 3 billion baht for children's midday meals, while the budget for the purchase of weapons amounted to 6.3

billion baht. The Chuan Leekphai government stated a policy on children (copied from the 7th National Economic and Social Development Plan), but there are still many problems regarding violation of children's rights.

There are numerous NGOs whose activities concern children's rights. One such organization is the Center for the Protection of Children's Rights (CPCR), whose role is to protect children's rights from being violated in various forms, such as subjecting children to labour or prostitution through deception, kidnapping, or ill-treatment. Other NGOs have similar roles. Some stress the education of children, training and development of labour skills or rehabilitation of children who have been ill-treated physically and mentally. There are also other NGOs, such as the Women's Group, the Women's Foundation and the Child Labour Protection Center, which concentrate on providing the general public with information in order to raise public awareness of the importance of those problems.

An international organization such as the ILO does not as yet have any large role to play in the protection of the basic rights of children. Its major work consists of compiling information on juvenile labour but it has not yet taken any action. UNICEF's work in Thailand usually concerns technical assistance, such as the holding of training courses and seminars, or giving assistance in publishing documents on the Convention on the Rights of the Child. Its assistance is given through the Office of the National Youth Development Committee, an agency in the Ministry of Education. UNESCO engages in the promotion of literacy among children; its other activities concern the welfare of children rather than the rights of children.

### **The Centre for the Protection of Children's Rights of the Foundation for Children**

Despite Thailand's support of the United Nations Convention on the Rights of the Child, several hundred thousand children (sometimes from neighbouring countries) continue to be used as cheap labour in factories and brothels in Thailand. Many work extremely long hours for little or no pay under harsh and degrading

conditions. Many Thai children are subject to mental, physical, emotional and sexual abuse, including trafficking.

The Centre for the Protection of Children's Rights (CPCR) was established to help combat these violations of children's rights. The Centre identifies and assists children who have been physically or sexually abused or who have been working illegally as prostitutes or in factories. The Centre also take legal action on behalf of some children and works to educate the public about children's rights.

Most recently, the Centre's activities have focused on the related issues of child abuse and child prostitution and the escalating problem of children with AIDS. Two centres in Bangkok provide emergency care, temporary shelter and rehabilitation, while two homes in northern Thailand provide educational alternatives, information and counselling for children who might otherwise leave villages to seek illicit work in the cities.

### **Aid programme division activities for 1992**

As a result of increased public awareness of child prostitution, the Aid Programme Division was able, in 1992, to take some action against this problem. It is hoped that the programme implementation and especially the wide distribution of information relating to cases rescued by the Centre will help to solve the problem at the policy-making level.

In 1992 the Centre provided help to many child prostitutes, mostly from ethnic minorities such as hill tribes, and from foreign groups, such as the Chinese and Burmese. In addition, the Centre played the role of child-prostitution information and coordination centre for the general public, including governmental organizations and NGOs, in order to publicise and take action against these increasing problems.

A total of 204 cases were dealt with by the Centre in 1992; 168 or 82% of the cases were reported by policemen, doctors, nurses, social workers, teachers and others. The remaining 36 or 18% of the cases were those followed up by the Centre when the cases appeared in the newspapers. In analysing the incoming reports to the Centre, it

was found that the interest of the general public in the issue had increased. Although some reports did not contain enough information to take action, they suggested the direction in which to look for further information.

In assessing the overall protection activities implemented in 1992, the Centre found that it had achieved most of the targets set in the initial working plan, but that the *quality* of the work should be improved. Moreover, although more staff had been recruited to take over the increasing tasks, three of these had resigned from the Centre and, with the staff shortage, some urgent activities had been delayed and had affected the quality of the work. In addition, the staff training and development schemes were not appropriately designed.

In addition to the 137 cases or 452 persons which the Centre had helped, it had also acted as coordinating agent with the relevant governmental and non-governmental organizations if help or further action was necessary. Legal and social welfare consultations were also provided in some cases, although at times the Centre could not take action because sufficient information or evidence was lacking.

### **Prostitution**

Of 245 victims who were rescued by the Centre, most were below 18 years of age. The prostitution cases were reported to the Centre mainly by well-intentioned people, policemen and the Chinese Embassy in Thailand. Apart from Thai prostitutes, there were also prostitutes from ethnic tribes, and of Chinese, Burmese and Laotian nationalities.

Seventy-eight of the victims were admitted to the rehabilitation house of the Centre, and the rest were sent to other relevant organizations, such as Ban Kred Takarn of the Public Welfare Department in Nonthaburi Province. Some aged prostitutes were also admitted to the Centre because they were kept as witnesses in the courts, and some were pregnant and needed different care. Thirty-one ex-prostitutes or 40% of the total 78 victims were found to be HIV positive. This finding confirms the fact that prostitution is accompanied by AIDS, which is an issue that is gaining in importance.

The interviews with the ex-prostitutes rescued by the Centre indicated that most of the women had taken up prostitution in order to earn money to support their families. Some had been lured and some had been willing to enter this trade because they thought that material well-being would help them have a better image in their own communities. In view of this finding, the campaign against the materialistic advantages of prostitution and for preventive measures among young girls should be continued.

The recent study of the issue and the cases taken up by the Centre show that there are many contributing factors to the commercial sex business and child prostitution problems which, in the Thai context, have assumed chronic proportions.

- Male dominant values and culture: because it is widely accepted by Thai society, the commercial sex business is seen as an important money-earner in the economy. Furthermore, the commercial sex business is no longer a closed issue but is open to the public.
- The problem of poverty: the majority of the Thai population earns its living from farming; most of these people are threatened by the low prices of their products, uncertain demand and, consequently, uncertain income, added to the high cost of living. Because of these limitations, some families have allowed their children to become prostitutes, while in other families children have been sent to look for work but have eventually been lured into prostitution.
- Increased materialism: teenagers who have become increasingly interested in costly and luxurious products are often limited by their economic situation and therefore enter into prostitution in order to earn money.
- Trading in women and children: this is usually well-organized and is supported by influential figures. Commercial prostitution is organized by financial institutions, politicians, policemen, doctors, tour guides etc. Initially involving high investment, the trade generates a large profit for the operators and the women involved.
- The role of parents: through financial incentives, many



parents are being persuaded into sending their children into the sex trade.

- Broken homes: situations where parents cannot give the appropriate support or do not understand the child's needs often result in the child running away. In most of these cases the girls will end up in brothels.
- The indirect effects of government policies: several policies have helped to push the prostitution issue to its peak, as tourism promotion policies include the expansion of this service industry.

### **Particular cases**

In early June 1992 the Centre, in collaboration with the Prostitution Prevention and Suppression Center, raided the brothels in Muang District of Ranong Province and rescued 40 victims. Among those rescued there were four Thai and the rest Burmese, with an age range of 16 to 30. Some were pregnant and some had young babies. Many of those rescued had been physically abused with cloth hangers and had wounds on their neck, chest, back and limbs. Some had been hit so much that they were in shock. Nevertheless they had to work as usual. In the brothels they were locked up and electric wires were placed around the house to prevent them from running away. During the raid, four brothel-keepers were arrested but the owner escaped. Following the raid, 20 ex-prostitutes were admitted to the rehabilitation home of the Centre.

Although the Centre had dealt with several immigrant prostitution issues previously, this case was new to the Centre in terms of illegal entry into the country. Most immigrant prostitutes came from the North at Mae Sai Thai and the Burmese border pass and the Centre could send them back through the same border pass with fewer legal formalities. This group however, had entered Thailand by going past Koh Song Island in Ranong Province by boat. The two problems in this case were how to send them back, and what legal procedures should be applied concerning their illegal entry.

## **Sexual harassment cases**

Fifty cases of sexual harassment were helped by the Centre; these included 64 children, five of whom were admitted to the rehabilitation home. The victims were 8 to 15 years old. The sexual abuse included the harassment and raping of girls by their grandparents, stepfathers, teachers and neighbours. The cases of rape showed that those who were convicted had unusual sexual behaviour. They were unable to control their own sexual need and express it normally. Furthermore, these people were usually aggressive and were heavy drinkers. In the past there had been cases of stepfathers raping their stepdaughters, but cases of fathers raping their own children were now increasing. This disintegration of moral values in the present society will cause severe mental trauma to the children.

## **Problems and obstacles**

On many occasions girls who had been raped said that they did not dare reveal this fact to strangers, particularly with regard to the report to the police, since the police is composed of men.

During the investigation someone who is familiar with the case should be present, as some of the girls are too ashamed to relate the facts to police officers; if possible, the investigation should be conducted by female investigators.

Some of the police consider that if a very young girl is involved, the act is only of an obscene nature, while in fact it is an act of rape. In other cases the police try to smooth over the matter by ignoring the victim's legal rights, especially if that person is under 15. It is clear that if the victim is ignorant of the law and the police wish to cover the matter up, the case will not be pursued.

Since the investigation usually takes place some time after the event, witnesses must also be helped to remember; if this is not done, the facts of the case may not be presented correctly by the girls. The Centre could participate more in this.

If a crime is committed by someone who is under-age, the case goes to the family and children's court, where the investigation is

specific to minors. In cases where minors have been raped, the investigation should also differ from that for adults. This idea remains to be put into practice in the future.

### **Physical torture**

There were 33 cases of children aged two to fourteen years old who received assistance from the Centre; the majority of the 33 children were small, and most had been tortured by members of their family (mother, relatives, etc.).

Legal procedures are not used at the beginning, because there are many reasons (economic, psychological, etc.) for physical torture and the use of legal procedures may complicate matters in such a way as to destroy the possibility of good relations in the family in the future. However, in some cases it is necessary to call on the police to remove the victim temporarily. At this stage it is the responsibility of the aid division staff to talk with the victim in order to clarify the problem and try to find a solution. In some cases of a psychological nature, the assistance of a psychologist is required for consultation and advice to both aggressor and victim.

After the person has returned to the family, the social worker will continue the follow-up. However, in certain serious cases the victim cannot go back to the family and it will be necessary to find a shelter for the long term.

### **Problems and obstacles**

In cases where it is necessary to separate the victim from the family, the help of the police must be sought, as the Centre is not legally qualified to interfere. The long-term follow-up also presents a difficulty, as the aid division is more focused on immediate work.

### **Labour exploitation**

The Centre assisted 12 cases (91 persons) in 1992; these had been reported by responsible citizens or by the victims themselves.

The preliminary procedure consisted of the investigation of the facts, since some of the reports lacked details and some were inaccurate. The police were called upon by the Centre to investigate and help mainly in cases of physical injury or where the victim had been deprived of his liberty. The main problem among the cases reported was the lack of legal protection. By the end of 1992, the government had a strict policy on child labour, and many government organizations were concerned with proceeding according to the policy, which was expected to result in an improvement of the situation.

### **Problems and obstacles**

Assistance is hampered by the lack of sufficient data for the initial investigation by the officer in charge, but the data is difficult to obtain as the workplaces are closed and the staff of the Centre has no legal authority to enter.

### **Other cases (kidnapping, street children etc.)**

In 1992 the Centre helped 25 cases (27 children), all of which had been reported by responsible citizens or the police. This indicates that the general public relies on the Centre for assistance. Violations of children's rights relate mainly to child beggars, street children etc. If possible, the Centre will collaborate directly with the appropriate working units, but if the matter is urgent the Centre will take immediate action and pass the case on later.

### **Problems and obstacles**

In cases of kidnapping, the action to be taken depends on the presence of witnesses, as the victims are generally small children who are unable to give evidence, and the parents, who have no evidence. Some mothers abandon their child after the birth, and this provides the opportunity for the abduction of the child in order to sell it. When arrested, the abductors always state that they took the child for adoption, and it is thus not possible to take action against them.

## **Legal procedure**

A total of 35 cases are awaiting the consideration of the courts. The legal procedure is long, sometimes requiring a number of years until the Supreme Court is reached. The judgment of each court may differ because of many factors which are in opposition to the wish of the victims for justice.

The delay in the investigations procedure in rape cases affects the results of these cases, as specific details may become blurred with time. Cases of child prostitution take a particularly long time to reach the court because of the difficulty of finding witnesses to give evidence, as these may have changed their address or, in the case of foreigners, may have returned home. Moreover, in some cases the witnesses may have been threatened, so that they are unwilling to give evidence and these cases cannot be pursued.

## Regional Organizations

*Rama Kant Rai*

South Asian Coalition on Child Servitude

### 1 Formation of the South Asian Coalition on Child Servitude (SACCS)

In view of the need to eliminate child labour in the carpet industry in the region, the first South Asian consultation on carpet children was organized in Delhi from 11 to 13 July 1992. The consultation was attended by social activists, jurists, members of trade unions, and academicians from India, Pakistan and Nepal. It was unanimously decided to establish the South Asian Coalition on Child Servitude (SACCS). SACCS has testified before the United Nations at the meeting of the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities held in Geneva in the second week of August 1992.

Among other things, it was decided to designate 18 September 1992 as "Carpet Children's Day" in the region.

The programme of action of SACCS is of a dynamic character: it aims to mobilise public opinion both within the region and abroad against this inhuman system of exploitation of children, raise a voice in international fora such as those of the UN, the International Labour Organization etc., and seek their intervention in the elimination of this evil system.

More than 50 voluntary organizations are now members of SACCS and campaign jointly.

### 2 Mass movements

By organizing media campaigns, protest rallies, sit-ins, demonstrations etc., we try to sensitise people at large to fight against child servitude. A 2000 kms. march from Bihar to Delhi organized by SACCS to educate people on the gravity of the

issue proved extremely successful. The march passed through 10 major industrial belts with large numbers of child workers and this created mass awareness on the issue.

3 Rehabilitation and leadership building

SACCS has undertaken some programmes for transit rehabilitation of bonded labourers, especially child bonded labourers, where a comprehensive training programme of skill formation, social orientation, leadership building and cultural development is offered. This work is carried out in conjunction with its member organizations in various States.

4 The consumers awareness campaign

Our experience has taught us that with the increase in demand for carpets in foreign countries the magnitude of child labour has also increased proportionately. The carpet exporters earn around ten thousand million rupees annually and employ approximately three hundred thousand children in the carpet industry alone. With the wholehearted cooperation of various human right organizations and consumer movements in Europe and the United States of America, our campaign has already made significant inroads. The aim of our campaign is not to achieve a boycott of Indian carpets but to create and promote a demand for carpets produced by adult labour. This campaign has not only put pressure on the carpet industry but has influenced other industries connected with child labour as well. Quite a number of exporters/manufacturers are now compelled to produce carpets without child labour. The governments of the countries in the region have also expressed their concern.

5 Identification of migrant/bonded children

A collective programme of identification of children was started in May 1993. With the help of our member organizations we are identifying all the families from which children have gone elsewhere for work and have been reported as either missing or as not being allowed to see their parents.

6 Working out common strategies for the rehabilitation of bonded children

Although the responsibility for the socio-economic rehabilitation of child labour lies with the government, we collectively decided to work out some model rehabilitation programmes in the catchment area from which the children migrated to other areas.

### **Future plan of action**

SACCS is becoming the voice of millions of children in servitude in South Asia. Its major achievement is the linkage of the social component of child servitude with the Western consumer movement and international trade. In this connection we would like in particular to mention the bill introduced by Mr. Tom Harkin in the United States Senate and the tremendous amount of pressure generated in Germany to buy goods produced without child labour. SACCS is also trying hard to develop a people's movement against child servitude, with evident success.

In India, until now, SACCS's main focus has remained the carpet industry where children are very severely exploited. We have carried out several raids in carpet-weaving units and rescued large numbers of children. This has come to the notice of several important media and has received very wide publicity. We have also conducted several demonstrations in Delhi and other places to make the issue more public. We have already mentioned the 2000 kms. march against child servitude from Nagar Utari (Bihar) to Rajghat (Delhi) in February 1993. The participation of 50 released child bonded labourers and 100 activists created a significant level of awareness and mass mobilisation not only en route but all over the globe. All the major world media covered the event and many national and international newspapers and periodicals wrote special editorials in its support.

Encouraged by the march, SACCS (India) has launched a rigorous parliamentary campaign to sensitise parliament and to mobilise the support of parliament members by forming a Parliamentary Forum on Child Servitude which cuts across party lines. We are continuously supplying material to hundreds of members of parliament and trying to bring the issue onto the main parliamentary agenda and into the mainstream of national politics. By



now about 40 members of parliament have already joined the Forum. Former Union Minister Mr. Satya Prakash Malviya volunteered to convene the Forum. As a result of our parliamentary lobbying more than a hundred questions were raised in the Rajya Sabha and Lok Sabha during the budget session and another 70 during the monsoon session.

SACCS has a number of partner organizations, including Creda, Ankur Foundation, Skvs, Sewapuri, Mukti Pratishthan, Adiwasi Panchayat, Nikhil Bharat Banwasi Panchayat and IIRT, which have some skill and experience in running non-formal education programmes, vocational training and rehabilitation activities. Since the delay in official rehabilitation is being misused as adverse propaganda by the carpet industry, we feel that it is essential to initiate some model programmes for rehabilitation. These could be as follows:

- opening of reporting centres in catchment areas;
- carrying out a systematic campaign for the identification of the families whose children could possibly be released from the carpet belt. The campaign will also examine the availability of existing schooling facilities for children and explore further possibilities of generating employment in the village;
- opening up model schemes of schooling, and rehabilitation centres in some cases of extreme necessity, for released children, vocational training for "learning and earning" for adolescents and adult family members. There would be three phases, the first to be started as soon as possible; the second phase might begin early in 1994, on the basis of the volume of repatriation of released children to their native villages, and the third phase would start in 1995;
- forming local pressure groups of parents, villagers and tribal people to pressure the local administration to open schools in the area and to include these families in a priority list of development programmes;
- pressurising the government to launch model innovative schemes of vocational training, raw materials banks and

credit facilities for the economic rehabilitation of the families of released child labourers. Although the sole responsibility for full-scale rehabilitation lies with the State and central government, it would not be wise to wait too long for a government response in a few cases of extreme necessity. Further, for demonstration purposes SACCS wants to set up some model centres through its experienced partner NGOs in the area. All these projects must be of a 'pilot nature' with the minimum possible budgets.

### **Our resolution**

We, SACCS, as a coalition of NGOs working for the elimination of child labour, resolve to pressure the national government to:

- a) completely eliminate child servitude by the year 2000;
- b) form a National Commission on Child Servitude, comprising a Supreme Court Judge and including High Court officials, human rights organizations and NGOs which will have an independent and full-fledged right to identify and rescue children in servitude;
- c) ban all products made by children;
- d) provide every child with the right to free and compulsory education, health, the care of parents and all that a child needs in early childhood;
- e) make provisions for strict punishment of employers of child labour;
- f) introduce a labeling system which guarantees that the product was not made by child labour;
- g) make suitable arrangements for the rehabilitation of rescued bonded children/labour.

## Regional Organizations

*Kamalinne Pinitpuvadol*  
Child Rights ASIANET

### **ASIANET - a regional network on children's rights**

Recently set up in Bangkok, Thailand, with the support of UNICEF's East Asia and Pacific Regional Office, Child Rights ASIANET is operated from the Faculty of Law of Chulalongkorn University as a regional information network on children's rights. It is administered by the International Law Association of Thailand and the University and is governed by a Regional Advisory Council composed of eminent persons from the region.

Child Rights ASIANET aims to play a "catalytic" role in promoting children's rights. Although the collections of data, statistics, and documents and research are a primary concern, the network will not remain a passive collector of information, but will rather be action-oriented. It will seek support and participation from governments and non-governmental organizations in the region not only to provide and disseminate information, but also to link up with them through a number of activities.

### **Scope of activities**

The principal activities of ASIANET are as follows:

- publication of material concerning children's rights in the Asia and Pacific region and related information;
- organization of seminars and forums to promote dialogue and interchange on children's rights in the region;
- arrangement of training programmes to assist State Parties to the Convention on the Rights of the Child and other interested parties in monitoring implementation of the

Convention and in fulfilling obligations under the Convention;

- social mobilization concerning children's rights in the region;
- interaction with the governmental and non-governmental sectors, and children, in the dissemination of children's rights;
- enhancement of research, monitoring and evaluation relating to children's rights.

At the operational level, the network will encourage and promote contact with the media and the private sector. It will identify partners and assist in monitoring the Convention's implementation, mobilise the participation of children in local communities, and strengthen knowledge of the Convention through training and education, both formal and informal.

The network is multi-disciplinary; it does not focus only on legal issues. It will build a capacity to communicate in the different languages used in the region. Ethnic languages will be utilised, in line with the Convention's provision against ethnic discrimination. Information, both quantitative (statistics and data) and qualitative (case studies), should help encourage the transfer of local experiences to the international level and the adaptation of international experiences to local levels.

With the World Summit Declaration on the Survival, Protection and Development of Children now endorsed by the global community, and since the Convention on the Rights of the Child has been accepted by many Asian countries, it is imperative to initiate a process of monitoring the progress of compliance. Child Rights ASIANET is an essential link in the chain of monitoring efforts, as it supports and assists countries in ensuring proper and effective implementation of these international instruments in the region.

### **ASIANET involvement in the drafting of the Thai report on children's rights**

When countries prepare national reports to be submitted to the Committee on the Rights of the Child, established by the Convention, they should consult with NGOs so as to incorporate relevant information.

ASIANET is now helping the Thai National Youth Bureau to initiate the first Draft Report to be submitted to the Committee under the Convention on the Rights of the Child. This will be done by organizing a national seminar to bring together experts on children's rights to submit information and data in conformity with the guidelines issued by the Committee.

## **PART III**

### **Background Paper**

#### **Reservations to the Convention on the Rights of the Child**

## **Background Paper on United Nations Mechanisms on Children's Rights**

### **The Committee on the Rights of the Child**

The Convention on the Rights of the Child was adopted by the General Assembly of the United Nations on 20 November 1989 and entered into force on 2 September 1990. Some 146 States are now parties to the Convention. The Vienna Declaration and Programme of Action, adopted by the UN World Conference on Human Rights on 25 June 1993, calls for measures to be taken to achieve universal ratification by the year 1995.

The State Parties, at their first meeting, elected the ten members of the Committee on the Rights of the Child from a list of persons nominated by State Parties.

The Committee elects its Chairperson and three Vice-Chairpersons and a Rapporteur to serve a two-year term as the officers of the Committee.

The first session of the Committee was held at United Nations Headquarters from 27 February to 1 March 1991. At its first meeting the Committee adopted the rules of procedure by which it would be governed. In June 1992, the first informal regional consultation for the Latin American and Caribbean region was held in Quito, Ecuador. These informal regional meetings are an innovation of the Committee on the Rights of the Child, which other human rights treaty bodies may also adopt in the future.

The second session of the Committee on the Rights of the Child was held from 28 September to 9 October 1992. For this session, the Committee introduced the use of "theme days." In October 1992, the Committee held its first theme day on "Children in Armed Conflict." Non-governmental organizations (NGOs) and inter-governmental organizations (IGOs) made written and oral presentations, describing the problems and making recommendations. These theme days are held once a year.

The Committee has two sessions every year, each lasting three weeks. A working group of the Committee meets for approximately a week, two months before each session, in order to undertake a preliminary review of reports of State Parties. It considers additional information on the situation of children in the countries concerned and formulates questions to which governments are expected to reply. These pre-sessional working groups of the Committee are generally composed of five members.

The third session of the Committee was held from 11 to 29 January 1993. There was no theme day at the third session. However, the Committee continued to receive information on children in armed conflict and on the worldwide problem of uncleared land mines.

The topic for general discussion (theme day), at the fourth session was "Protection of children from economic exploitation." This is related to the obligations of State Parties under Article 32. The purpose of the general discussion is also to provide a basis for a general comment, as a means of assisting in the interpretation of the Convention.

In relation to future studies, it was decided that under Article 45 of the Convention, the Committee would request a study on children in armed conflicts. Among other topics on which studies would be requested over the next two years are Article 2 of the Convention concerning non-discrimination, education rights and the use of the mass media, and the family environment (1994 is the International Year of the Family). Governments, NGOs, universities and other research centres would be requested to undertake these studies, their purpose being to increase awareness of children's rights and lead to the establishment of concrete policies.

## **Country Reports**

The reports by State Parties to the Convention are submitted two years after ratification and every five years thereafter.

The Committee is not a court which holds governments accountable, but simply a forum for dialogue with national representatives on the situation of children in the country concerned.



At the third session, in January 1993, the reports from seven States Parties were considered (Bolivia, Egypt, the Russian Federation, Rwanda, Sudan, Sweden and Vietnam). In view of the fact that the initial reports of 146 State Parties would need to be considered by the Committee between 1993 and 1996, before the second periodic reports became due, the Committee has let it be known that it will devise innovative methods of dealing with the situation to avoid too great a backlog.

There is a proposal that the secretariat should make available a comprehensive country dossier to each human rights treaty body, in respect of each country. If the proposal is accepted, NGOs will be formally requested to submit written documentation to be included in this country dossier.

### **The Committee on Economic, Social and Cultural Rights**

The International Covenant on Economic, Social and Cultural Rights came into force in 1976. The Economic and Social Council (ECOSOC) of the United Nations was given the task of considering State Party reports on the manner of implementation of the Covenant and the progress made in the enjoyment of these rights.

In 1978, ECOSOC established a 15-member sessional working group to assist it in considering the reports submitted by State Parties. The working group, hitherto appointed by the chairman of ECOSOC, became an elected body of governmental human rights experts in 1982. In 1985, the working group was transformed by ECOSOC into the Committee on Economic, Social and Cultural Rights, with 18 members - experts with recognised competence in the field of human rights - who serve in their personal capacity.

The Committee on Economic, Social and Cultural Rights holds two sessions a year in Geneva, each of three weeks' duration. They are usually held in public and summaries of the debates are issued to the media.

Several months before each session a five-member working group meets to study the reports of State Parties which are scheduled for examination and to identify the points which may be taken up

with the representatives of the countries concerned. A list of the questions which are likely to be raised is sent in advance to the State Party concerned. The discussion on each report is summarised in the Committee's annual report to ECOSOC.

NGOs can submit oral and written information to the Committee. Written information can be provided at any time. A short period of time is available at the beginning of each session of the pre-session working group to enable NGOs to submit oral information to the members of the working group. The Committee also receives oral information from NGOs. NGOs wishing to present oral information should inform the Committee in advance.

#### Topics for discussion

At each Committee session there is a debate on one specific right. The Committee invites specialists to contribute to these discussions, which have so far dealt with basic human rights such as the right to food and the right to housing.

#### General comments

The Committee on Economic, Social and Cultural Rights makes general comments on the Covenant and the issues it raises. These comments draw on the experience gained in examining the reports of States with various socio-economic, cultural, political and legal systems in different parts of the world.

The intention is to help the State Parties in their task of implementing the Covenant, as well as to bring to their attention deficiencies in the reports they submit and suggest improvements in the reporting procedure.

The Committee's comments are also designed to accelerate action by the State Parties, various international organizations and UN specialised agencies which will lead to the full enjoyment of economic, social and cultural rights.

Some of the rights relevant to children that are protected by the International Covenant on Economic, Social and Cultural Rights are

as follows.

Article 10 deals with protection and assistance to be provided for the family, and special protection accorded to mothers and children. In Article 11, the Covenant states that an adequate standard of living is everyone's right and this includes adequate food, clothing and housing. The fundamental right of everyone to be free from hunger is specifically recognised (Article 11-2). In Articles 12 and 13 it is recognised that everyone has the right to the highest attainable standard of physical and mental health and to an education. Article 13 further elaborates that State Parties are to provide free and compulsory primary education; there should be arrangements for secondary education to become available and accessible to all. There should be equal access to higher education (Article 13-2). Parents and legal guardians should be free to choose schools for their children and to ensure that their religious and moral education is provided for (Article 13-3).

### **The Human Rights Committee**

The International Covenant on Civil and Political Rights came into force in 1976. The Covenant made provision for the establishment of a Human Rights Committee in Article 28. This Committee is composed of 18 members of high moral character and recognised competence in the field of human rights. The members of the Committee are elected to serve in their personal capacity and not as representatives of their countries.

They are elected by a secret ballot of the State Parties for a term of four years. Elections for half the membership are held at two-yearly intervals at UN Headquarters in New York, during the annual sessions of the General Assembly.

The Human Rights Committee normally holds three sessions, each lasting three weeks, in the course of the year. These sessions are usually held at UN Headquarters in New York in the spring, and at the UN Office at Geneva in the summer and autumn. Two working groups, each consisting of more than five members of the Committee, meet for one week before each session.

## Recommendations

The Committee's examination of State reports in public meetings has proved to be a satisfactory way of monitoring the observance of human rights. A clearer picture of the human rights situation in a country emerges from the discussion, and the Committee is able to make recommendations on ways of giving better effect to the Covenant in national law and practice. Legislative changes have been made in a number of countries as a result of examination of their reports by the Committee.

The annual report of the Committee to the General Assembly through the Economic and Social Council records its findings and recommendations. In the Yearbook on Human Rights published by the UN, there is an account of the practice of the Human Rights Committee in examining reports from governments, as well as of its decisions, general recommendations, comments and observations.

## General comments

Interpreting the International Covenant on Civil and Political Rights so that there can be no doubts about the scope and meaning of its articles has become an important function of the Human Rights Committee. As in the case of other human rights treaties, the comments guide the State Parties in applying the provisions of the Covenant as well as in preparing their reports.

The issues in the Covenant that have been addressed in the Committee's general comments include the rights of children and their protection. While many of the provisions of the International Covenant on Civil and Political Rights have a bearing on the rights of children as well as adults, there are some that are particularly relevant to children.

Among these are Article 23, which provides that in the case of the dissolution of a marriage, provision shall be made for the necessary protection of any children, and Article 24, which provides that a minor shall not be discriminated against on the grounds of his race, colour, sex, language, religion, national or social origin, property or birth.

## **The Commission on Human Rights, The Sub-Commission on Prevention of Discrimination and Protection of Minorities and the Working Group on Contemporary Forms of Slavery**

### **General introduction**

There are several ways of accessing the UN mechanisms on the rights of the child. The most obvious is that which has been discussed above, that is, when a country has acceded to a Convention. In such a case, an NGO can bring to the attention of the Committee set up under the Treaty, that a State Party is violating (a) particular international obligation(s) in respect of children.

There is also a second method of bringing to the attention of the UN the fact that children's rights are being violated. This method of protection is called Charter-based protection. In the aftermath of the Second World War, the Charter of the United Nations gave universal value to the concept of human rights for the first time. In the Charter, the international community of nations recognised that all members of the human family have equal, inalienable rights. The UN, the Charter states, will promote "universal respect for, and observance of, human rights and fundamental freedom for all without distinction as to race, sex, language or religion."

In 1993, 188 nations were members of the UN. All member nations of the UN have to subscribe to the UN Charter and that includes legal obligations under the Charter.

The Economic and Social Council established a Commission on Human Rights in 1946, which held its first session in 1947.

To help it in its work, at the first session of the Commission it was decided to establish the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which specialises in new human rights issues. The Commission on Human Rights and the Sub-Commission have special mechanisms such as Working Groups, Special Rapporteurs or Independent Experts to study and report on various aspects of the violation of human rights.

As both the Commission and the Sub-Commission derive their

validity from being created under the authority of the Charter, all States that are members of the UN can be scrutinised with regard to their human rights practices by these two organs. In practice, non-membership of the UN is not deemed to exclude the jurisdiction of these two bodies when examining violations of human rights in any part of the world.

### **The Commission on Human Rights**

The Commission on Human Rights is composed of 53 members elected by the Economic and Social Council (ECOSOC) from the Member States of the UN. Governments representatives who sit on the Commission are elected for a four-year term of office. Elections take place every two years for half the membership. The distribution of seats in the Commission has to take account of the geographical diversity of States. It meets generally once a year<sup>15</sup>, in February-March, in Geneva, for a period of six weeks. Delegations make statements and vote on proposed resolutions and divisions in the same way as in any other UN body, that is, on behalf of the governments of the States they represent. Most other UN Member States send observer delegations which can make statements but have no right to vote.

There is an agenda item of the Commission on Human Rights which deals with issues pertaining to the rights of the child. These are:

- a) Status of the Convention on the Rights of the Child;
- b) Report of the Special Rapporteur on the Sale of Children;

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15 In 1992, it broke with past practice and decided that an extraordinary meeting of the Commission on Human Rights can be called at any time of the year, to discuss an emergency situation of grave violations of human rights in any part of the world. Accordingly, the first extraordinary session of the Commission was held in 1992, to discuss "ethnic cleansing" and mass rape of women in the former Yugoslavia.

- c) Draft programme of action for the elimination of the exploitation of child labour;
- d) Programme of Action for the prevention of the sale of children, child prostitution and child pornography.

Non-governmental organizations (NGOs) that have consultative status with the Economic and Social Council are allowed to make a ten minute oral intervention on any of the issues listed under this item. These NGOs can also make written statements.

### **The Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography**

Mr Vitit Muntabhorn (Thailand) was appointed Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography by the Commission on Human Rights in 1990. In 1992 the Special Rapporteur's mandate was renewed for a further period of three years.

His 1993 report is very innovative. It covers broadly the three areas given to the Rapporteur in terms of his mandate, that is, the sale of children, child prostitution and child pornography. However, it is in the treatment of these areas that he breaks new ground.

For example, the section on the sale of children covers four topics, one of which is the traditional understanding covered by commercial adoptions; the other three are novel: child labour exploitation, human organ transplantation and other forms of sale (issues of disappearances, abductions, kidnapping of children, and child soldiers). The creativity of the Rapporteur is manifested again in treating the exploitation of child labour as an aspect of the sale of children.

The working definition adopted for "child prostitution" is "the sexual exploitation of a child for remuneration in cash or in kind, usually but not always organized by an intermediary (parent, family member, procurer, teacher, etc.)." The Rapporteur has explored the global ramifications of this problem, in the process bringing home the culpability of Western paedophiles and the sex-tourism industry in providing the fuel for child prostitution in some Asian countries.

The working definition adopted for "child pornography" is "the visual or aural depiction of a child for the sexual gratification of the user, and involves the production, distribution and/or use of such material." To this may be added the presence of various pornographic performances which go beyond the availability of pornographic material. The situation of child pornography is often interwoven with child prostitution. What may have begun as a purely "Third World problem," is now seen in its proper perspective, as a global problem that requires a multi-disciplinary approach for prevention and rehabilitation.

### **The Sub-Commission on the Prevention of Discrimination and the Protection of Minorities**

The Sub-Commission meets annually for four weeks in Geneva, in August. It is composed of 26 independent experts nominated by their governments and elected by the Commission on Human Rights. As in the Commission, the experts have to reflect the geographical diversity of the world. Half the membership is elected once every two years, for a four-year term of office.

Issues relating to children are dealt with under the following items :

- a) an agenda item which deals with contemporary forms of slavery, including the sale of children, child prostitution and child pornography and the exploitation of child labour and debt bondage;
- b) an agenda item which deals, among other things, with the prevention of discrimination and protection of children. Some of the issues discussed under this head are the implementation of the Convention on the Rights of the Child; effects of armed conflicts on children's lives and the plight of street children.

The following studies dealing with children were presented to the Sub-Commission:

- the report on slavery submitted in 1966 by Mr Mohammed Awad (UN Publication Sales No. 67.XIV.2)



- the report on the exploitation of child labour by Mr Abdelwahab Bouhdiba, presented in 1979 (E/CN4/Sub 2/1982/29)
- the report by Benjamin Whitaker, Special Rapporteur, presented in 1982, updating the 1966 report on slavery (E/CN4/Sub 2/1982/20)
- the report of Mr Jean Fernand-Laurent, Special Rapporteur, on the suppression of traffic in persons and the exploitation of the prostitution of others, presented in 1983 (E/1983/7)
- the report of the seminar held in Geneva in 1985, as a result of a recommendation made by Mr Boudhiba on the question of finding ways and means of eliminating the exploitation of child labour in all parts of the world (ST/HR/SER.A/18)
- the report of the Working Group on Traditional Practices Affecting the Health of Women and Children, presented by Mrs Warzazi in 1986 (E/CN4/1986/42)
- the final report of Mrs Mary Concepcion Bautista, on the question of detained juveniles, presented in 1992 (E/CN4/Sub 2/1992/20)
- The final report of Mr Dumitru Mazilu, on human rights and youth, presented in 1992 (E/CN4/Sub 2/1992/36)

### **The Working Group on Contemporary Forms of Slavery**

The Working Group on Contemporary Forms of Slavery is a pre-sessional working group of the Sub-Commission.

#### **History**

The Economic and Social Council, upon the recommendation of the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the Commission on Human Rights, decided in May 1974 to authorise the Sub-Commission to establish a five-member working group to review developments in the fields of :

- a) the slave trade and slavery-like practices of *apartheid* and colonialism;
- b) the traffic in persons and the exploitation of the prostitution of others, as defined in :
  - (i) the Slavery Convention of 1926 ;
  - (ii) the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956;
  - (iii) the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of others of 1949.

In March 1988, the Commission on Human Rights endorsed the recommendation of the Sub-Commission that the name of the Working Group on Slavery be changed to 'Working Group on Contemporary Forms of Slavery' (hereinafter referred to as the Working Group).

#### Methods of work

When the Working Group's mandate was revised in 1988, the Group adopted the following methodology. It was agreed that there should be an examination of relevant standards both at the international and national levels, and of real life situations. Gathering and dissemination of information would also be strengthened.

It was suggested that more people with first-hand knowledge of the problems of contemporary forms of slavery should be encouraged and helped to attend the Working Group, so that it might benefit from their special knowledge, and give a more global overview of the problem. This suggestion was formally concretised in the proposal creating the United Nations Trust Fund on Contemporary Forms of Slavery in December 1991.

## Programme of work

In 1988, the Working Group prepared a programme of work to cover the period 1989 to 1991. This programme of work suggested that three main themes should be discussed in successive years :

- prevention of the sale of children, of child prostitution and of child pornography (1989);
- eradication of the exploitation of child labour and of debt bondage (1990);
- prevention of traffic in persons and of exploitation of the prostitution of others (1991).

## Programme of Action

- 1 Prevention of the sale of children, child prostitution and child pornography

In 1992, the Commission on Human Rights approved the Programme of Action of the Working Group. The Commission requested all States periodically to inform the Sub-Commission of measures adopted to implement the Programme of Action and of the efficacy of such measures, and also requested the Sub-Commission to submit to the Commission every two years a report on the status of implementation of the Programme of Action by all States.

The Commission would accordingly consider every two years, beginning in 1994, the implementation of the Programme of Action in order to assess the progress achieved in the prevention and elimination of the problem of the sale of children, child prostitution and child pornography.

- 2 Eradication of the exploitation of child labour and debt bondage

It was decided to establish a multidisciplinary programme on the elimination of child labour for the period 1992 to 1993. One of the major aims would be the promotion of the ratification and application of Convention No.138: Minimum age.

More particularly, the programme is aimed at preventing children from undertaking dangerous work and at protecting the youngest and most vulnerable. Through an extra-budgetary fund, many other organizations, including NGOs, would be involved in the campaign on the elimination of child labour.

3 Prevention of traffic in persons and the exploitation of the prostitution of others.

This was one area where the Working Group could not make much headway. No action was taken by the Commission on Human Rights at its 49th session, in 1993, with regard to the draft programme of action for the prevention of trafficking in persons and exploitation of the prostitution of others.

The Working Group decided at its 18th session, in 1993, to seek information about and to study at its 19th session the relationships between traffic in persons, prostitution, drug trafficking and money laundering and international co-operation to combat these phenomena.

### **United Nations Trust Fund on Contemporary Forms of Slavery**

The General Assembly of the UN established the United Nations Trust Fund on Contemporary Forms of Slavery by resolution 46/122 (1991). The Fund has two purposes; these are to :

- a) assist representatives of NGOs from different regions, dealing with issues of contemporary forms of slavery, to participate in the deliberations of the Working Group by providing them financial assistance; and
- b) extend, through established channels of assistance, humanitarian, legal and financial aid to individuals whose human rights have been severely violated as a result of contemporary forms of slavery.

At the 18th session of the Working Group, in 1993, NGOs were also requested to contribute towards the Fund. The first session of the United Nations Trust Fund on Contemporary Forms of Slavery was held in 1993.

### **How the Working Group sees its work**

In 1992, the Working Group evaluated its activities over the preceding three years and the following observations were expressed by the Group with regard to its work. It was observed that one of the notable achievements that arose from the programme of work was the appointment by the Commission on Human Rights of a Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography in 1990.

It was noted that for a State to accept that slavery-like practices existed on its territory seemed to be equivalent to an admission of guilt. For that reason States tended to whitewash the situation and to insist that everything possible was being done.

Alternatively, States took the position that the global socio-economic system was such that States could not be expected to tackle slavery-like practices or that they themselves were not responsible for them.

The Group suggested that there was an element of truth in that idea. However, to adopt such attitudes was to misinterpret the functions of the Working Group, which were not of an accusatory kind.

The aim of the Working Group was to become aware of the existence and the dimension of the problem, to discover how incidents could be mitigated and their continuance prevented. The Working Group accepted the fact that countries themselves were most anxious to tackle the problem.

### **The World Conference on Human Rights**

The UN World Conference on Human Rights was held in Vienna, Austria, in June 1993.

The Vienna Declaration stated that national and international mechanisms and programmes should be strengthened for the defence and protection of children.

The Conference also urged States to withdraw reservations to

the Convention on the Rights of the Child contrary to the object and purpose of the Convention or otherwise contrary to international treaty law.

The Conference also urged all nations to give priority to reducing infant and maternal mortality rates, reducing malnutrition and illiteracy rates, and providing access to safe drinking water and to basic education.

The Conference stated that it strongly supported the proposal that the UN Secretary General initiate a study into means of improving the protection of children in armed conflicts:

“Humanitarian norms should be implemented and measures taken in order to protect and facilitate assistance to children in war zones. Measures should include protection for children against indiscriminate use of all weapons of war, especially anti-personnel mines. The need for aftercare and rehabilitation of children traumatised by war must be addressed urgently. The Conference calls on the Committee on the Rights of the Child to study the question of raising the minimum age of recruitment into armed forces.”

### **The Role of International NGOs**

In 1983, an NGO group was formed which was called the Informal Ad Hoc NGO Group for Drafting of the Convention on the Rights of the Child. This was made up of thirty international NGOs. During the period 1983 to 1988, members of the NGO group were actively involved in the drafting of the Convention.

In addition to participating in the meetings of the United Nations Working Group on Contemporary Forms of Slavery, the NGO group also held regular consultations, twice a year, to analyse the texts of articles of the Convention which had been proposed or adopted and to draft suggested amendments or to recommend the inclusion of new articles. The results of these consultations were made available to the Working Group meetings the following year. Members of the NGO group developed a positive working

relationship with the Working Group delegations and the NGO group has been credited with having a constructive influence on the Convention's final text. Soon after the Convention came into force, the international Seminar on the Implementation of the Convention on the Rights of the Child with Special Reference to the Exploitation of Child Labour, Bonded Labour and Trafficking and Sale of Children was convened by Defence for Children International (DCI) and the International Commission of Jurists (ICJ) at the invitation of the International Association of Penal Law.

The original purpose of the NGO group was to disband once the Convention on the Rights of the Child had been adopted by the General Assembly. However, as Article 45 of the Convention foresees a specific role for NGOs in the implementation of the Convention, the NGO group felt it was desirable to reorganize in order to assist in the monitoring of the Convention. It meets twice a year in Geneva. DCI has retained its role as the secretariat for the NGO group, a position which it has held since 1983.

To carry out its new mandate, the NGO group has undertaken a number of tasks. First and foremost among them is to promote the information flow between the non-governmental community and the Committee on the Rights of the Child. This means that the NGO group closely follows the activities of the Committee and keeps its members and their affiliates informed of the work of the Committee. Through their network of national affiliates, they are also able to act as a resource for information regarding State Party compliance with the standards of the Convention.

Members of the NGO group have created sub-groups to follow the activities of the UN relating to the Rights of the Child. So far the following seven sub-groups, each of which is coordinated by an agency of the group, have been formed.

1. Sexual exploitation of children  
Coordinating agency: International Catholic Child Bureau (ICCB).
2. Exploitation of child labour  
Coordinating agency: Anti-Slavery International (ASI).

3. Children in conflict with law  
Coordinating agency: International Association of Juvenile and Family Court Magistrates
4. Refugee children and children in armed conflicts  
Coordinating agency: International Save the Children Alliance
5. Adoption and family placement  
Coordinating agency: International Social Service
6. Education and the Media  
Coordinating agency: Ba'hai International
7. Leisure and play  
Coordinating agency: International Association for the Child's Right to Play (IPA).

To facilitate the monitoring and implementation of the Convention at the national level, the NGO group is working to encourage the creation and development of national coalitions of NGOs. At the present time the NGO group has made contact with approximately 15 such national coalitions. A meeting of representatives from these coalitions was hosted by the NGO group towards the end of 1992. The purpose of that meeting was to offer NGO group support and assistance to national coalitions as they carry out their children's rights monitoring tasks.

Finally, the NGO group has begun to undertake the publication of documents and booklets aimed at providing information about the content and implementation of the Convention on the Rights of the Child.

All queries and information should be forwarded to the secretariat (DCI) of the NGO group at the address given below :

Defence for Children International  
P.O. Box 88, CH 1211 Geneva 20,  
Switzerland.  
Tel.: (4122)-7340055588; Fax : 7401145



The NGO group advocates on children's issues at the following five UN mechanisms :

- the Committee on the Rights of the Child;
- the Commission on Human Rights;
- the Sub-Commission on Prevention of Discrimination and Protection of Minorities;
- the United Nations Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography;
- the Working Group on Contemporary Forms of Slavery.

### **Funding**

These sub-groups will assist in lobbying on these issues. They may also assist in raising funds for an NGO to come to Geneva to testify before the pre-sessional committee.

The regional office of UNICEF also provides funding for NGOs to come to Geneva for the pre-sessional committee. However, requests for funding have to be submitted through the national UNICEF offices.

### **General**

Information on the Committee on the Rights of the Child can also be obtained directly from the UN Secretariat:

Secretary to the Committee on the Rights of the Child,  
Centre for Human Rights

Palais des Nations, 8-14 avenue de la Paix  
1211 Geneva 10,  
Switzerland

Tel.: (4122) - 9173359; Fax: 9170118

Copies of UN reports can be obtained from :

Centre for Human Rights,  
Palais des Nations, 8-14 avenue de la Paix  
1211 Geneva 10,  
Switzerland  
Tel.: (4122) - 9173359; Fax: 9170118

# **Reservations to the Convention on the Rights of the Child**

## **A Look at the Reservations of Asian States Parties**

*Bruce Abramson*

This paper looks at reservations that Asian countries have made to the Convention on the Rights of the Child. The seven countries, Bangladesh, China, India, Indonesia, South Korea, Pakistan and Thailand, that ratified by 29 January 1993 will be discussed. The emphasis will be on explaining how each reservation affects the work of NGOs at the national level - what national NGOs need to look for, what they can do.

Each reservation will be discussed on a country-by-country basis in the second part of this paper. Since the Convention on the Rights of the Child (CRC) is a legal document, some basics about treaty reservations will be discussed in the first part of the paper.

### **1 The basic rules about reservations to treaties**

#### **a) What is a "Convention"?**

"Convention" is another word for "treaty." When countries - or States - make a treaty, they are making promises to each other. These promises create rights and obligations which are legally and politically binding.

#### **b) How is a human rights treaty different ?**

Human rights treaties, such as the CRC, are different from other types of treaties. The promises that States make in human rights treaties give rights to individuals. Also, as more and more States ratify a treaty, the treaty standards can become international standards

that all States will be expected to live up to, whether or not they have ratified the treaty.

The promises that a State makes in a human rights treaty are, in effect, promises to make whatever changes are necessary to meet the treaty standards. If a State's constitution conflicts with a treaty standard, or if a law or administrative practice is in conflict, the State, in effect, promises to change the constitution, law or practice. States can, of course, have higher standards, but the treaty standard is the minimum.

Some treaty standards cover the behaviour of the public. In these cases, the State promises to change social practices. For example, in the CRC, States promise to "take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children" (Art. 24.3).

Human rights treaties are also different because, by ratifying a treaty, the State allows the international community to criticize how it is living up to the treaty standards. For example, in the CRC each State must write a report on its implementation of the Convention, which will then be reviewed at public sessions by a Committee of experts (Arts. 44 and 45).

c) What is a "reservation"?

A reservation is a statement that a State makes at the time of ratification which either puts a limit on a right or cuts out a right altogether.

International human rights are the supreme standard - any law or practice in conflict with them must be changed. When a State ratifies the CRC, its laws and practices can be listed in the order of their supremacy :

- CRC
- Constitution
- Laws and administrative practices
- Social practices.

For example, by ratifying the CRC, a State promises that it will

not impose capital punishment on anyone under 18 years of age (Art. 37(a)). If a State Party to the CRC had a law which permitted the execution of a juvenile, Article 37(a) would be violated if the State followed domestic law and imposed a death penalty on a minor. Ratification is, in effect, a promise to change the law to conform to the higher treaty standard. If the State had not been willing to comply with the higher CRC standard, it had the option of making a reservation to Article 37(a) or not ratifying the treaty.<sup>16</sup>

A reservation to the CRC changes the order of supremacy; it either puts a CRC right in a lower place on the list or removes the right.

South Korea's reservation to the article on adoption safeguards says, "The Republic of Korea considers itself not bound by the provisions of paragraph (a) of Art. 21." The effect of this reservation is to remove Article 21 (a) from the treaty : the treaty standards set in that paragraph do not apply in South Korea; the government has made no promise to change any law or practice which conflicts with that paragraph.

Bangladesh's reservation to the same adoption article says, "Article 21 would apply subject to the existing laws and practices." The reservation does not remove the article, but the standards are lowered : if any law or social practice in Bangladesh is contrary to the

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16 Even though the CRC standards are supreme, a State court might not have the authority to apply the higher treaty standard over a conflicting domestic law. In many countries, a State court would say that implementation of a treaty is a political matter for the government, not a legal matter for the courts. If a juvenile were executed in such a country, the punishment would be lawful under domestic law but a breach of the treaty. However, in a country which has made the CRC "self-executing," a State court might have the authority to set aside or invalidate a State law on the basis that it conflicts with the higher treaty standards. In other words, the treaty standard is always supreme, whether or not a State court has the power to invalidate domestic legislation.

treaty standard, the government has made no promise to change the law or practice.

Because of their reservations, South Korea and Bangladesh are not parties to exactly the same Convention. However, it is still correct to say that they are "parties to the CRC" because it is understood, without being expressed, that a reservation has removed part of the treaty.

A reservation not only limits, or eliminates, the international human rights of individuals, but it also limits the rights of other States to enforce the treaty standards. Since South Korea has not promised to live up to the adoption safeguards set by CRC Art. 21(a), other States do not have the right to criticise South Korea's failure to live up to that article. Without South Korea's promise to live up to the standard, enforcement action by another State might be a violation of South Korea's sovereignty.

There are limits to sovereignty, however. Some human rights are so widely accepted as fundamental that States may take enforcement action against violations even if the violating State made a reservation or even if it did not ratify a treaty. Violating the right to life by genocide is an extreme example.

A reservation only affects the article, or paragraph of an article, that is specified. For example, South Korea's reservation to Art. 21(a) does not affect the rest of Art. 21 nor any other article. Many CRC articles give overlapping protection. When children's advocates are faced with a reservation to one article, they must see how other articles, which do not have a reservation, can be applied.

#### d) Declarations

A "declaration" is different from a "reservation." When a State ratifies a treaty, it can make a declaration explaining what it understands a word or sentence in the treaty to mean. Such an "interpretative declaration" has the legal effect of limiting the State's promise, but it is different from a reservation. The difference is the intention. The State's intention in a reservation is to exclude or modify a treaty standard, while the State's intent in a declaration is to explain what it understands that standard to be.

Another kind of declaration gives an explanation of the State's policy. These declarations often look like mini political speeches and are sometimes made to satisfy political interests at home which might otherwise oppose ratification.

Sometimes, unfortunately, the wording that a State uses is so unclear that it is difficult to tell if the State has made a declaration or a reservation.

e) Are reservations legal ?

Since human rights treaties set minimum standards, is it legal to make a reservation ? The answer is yes and no.

During the negotiation of a treaty, complete agreement on all issues is usually not possible. Reservations are a practical way to get the largest number of States to be parties - it allows a State to eliminate what it does not agree with. Of course some limit must be put on reservations or the objective of a treaty would be destroyed.

A State can make a reservation to the CRC, but "[A] reservation incompatible with the object and purpose of the present Convention shall not be permitted." (CRC Art. 51.2). Since the CRC does not say who decides "incompatibility" or who has the job to "not permit" an incompatible reservation, the answers must come from general principles of international law.<sup>17</sup>

A State can only make reservations or declarations at the time it ratifies a treaty. Each State that is already a Party has the right (and duty) to decide if another State's reservation is compatible. If a States Party finds the reservation incompatible, it can reject the ratifying State as a party. In that case, no treaty is formed between the two States. Note that it is not the reservation that is rejected; it is the reserving State that is rejected as a treaty partner.

The decision to reject a reserving State is a mixed decision : it is

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17 The Vienna Convention on the Law of Treaties (1969) covers reservations, but it is only binding between those States which have ratified it.

part legal, part political. The legal part is deciding if a reservation is incompatible. The political part is deciding whether to enforce CRC Art. 51.2 by rejecting the State as a party.

Any State Party that does not promptly reject the reserving State is considered to have accepted the reserving State as its treaty partner. The treaty between them is modified according to the reservation.

Any State that later ratifies the treaty must decide, at the time of its ratification, whether to reject as a treaty partner any prior States Party that has made a reservation.

Under this system it is certainly possible for treaty relations to become very complicated: not all the treaty parties may be partners with each other. But this has not happened with the CRC. Out of 128 parties, 33 have made reservations, but none has rejected another State (figures accurate as of 29 January 1993).

The two important points to keep in sight are these: Reservations are not unilateral. While a decision to make a reservation is unilateral, the reserving State cannot become a Party unless another State decides to accept it. And the decision to accept or reject is part legal, part political.

f) Objections to reservations

There is another option that a State Party has when faced with a reservation. It can accept the reserving State as a treaty partner but make an objection to the reservation. The objection has no legal effect, however. It is only a statement of disapproval.

g) Can a reservation be taken back ?

A State can cancel, or withdraw, its reservation at any time. A withdrawal has the legal effect of putting the reserved article back into the treaty.

Sometimes a reservation is too broad, that is, it cuts out too many rights when compared to what the government's concern is. There are two things a government can do about an unnecessarily wide reservation. First, it can make a partial withdrawal. For example, if a reservation says "subject to existing laws and practices," dropping the words "and practices" is a partial withdrawal.



A partial withdrawal will narrow a reservation, thereby giving more rights.

Second, a State can clarify a broad reservation by making a policy statement explaining how the reservation will be interpreted and applied. The policy statement can take many forms: an administrative order, decree, legal opinion, or even a press release. Policy statements can give government officials important guidance in how to implement the reservation, which can be useful to NGOs in their advocacy.

h) How is the work of a national NGO affected by a reservation ?

The effect of a reservation on a national NGO's work will depend on which role the NGO is playing. Three main roles that NGOs play are :

- to investigate - The first step in protecting children's rights is to investigate the actual conditions of children. This includes not only studying the State's laws and regulations, but also government practices and social practices. The inspection of juvenile jails, examining the quality of medical care at a refugee camp, looking at the teaching methods and materials in schools are all parts of investigation. A reservation to the CRC does not change this work;
- to evaluate - In order to make a decision about the best interests of children, there must be an evaluation of how a practice impacts on children. While some effects on children will be obvious, sometimes experts will be needed. Also, since a decision about "best interests" reflects social values, the wider community must be involved at some point. A reservation does not change this work;
- to advocate - The goal of advocacy is change - to improve children's lives by bringing State and social practices up to treaty standards. This is where a reservation will cause the most problems for national NGOs.

When a right is protected by the CRC, a national NGO can say to its government:

- by ratifying the CRC, the government gave legal rights to

children; it must now respect those rights;

- by ratifying the CRC, the government has promised to make the necessary changes; now the government must live up to its promises;
- CRC rights are international standards; the government must make changes to comply with these standards;
- the international community insists that the government live up to international standards; the country's reputation, foreign aid, and even trade can be hurt if human rights are being violated.

A reservation either takes away or reduces the power of these arguments.

How a reservation affects advocacy will depend upon what the NGO's objective is: to implement the CRC with the reservation in place, or to get the reservation withdrawn or narrowed.

In any case, good advocacy requires an NGO to know the law. When there is a reservation to one CRC article, NGOs must advocate on the basis of other CRC articles, as well as the nation's laws and cultural values. Also, most States have ratified other human rights treaties, which must also be used in advocacy.<sup>18</sup>

Misunderstanding the law can create problems. For example, government officials might misunderstand a reservation, implementing it in a way that unnecessarily limits children's rights. In these cases, NGOs must know the law better than the government officials do; educating government officials is an important part of advocacy.

Effective advocacy also requires knowing the facts. A

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18 While there are many human rights treaties, the two Covenants of 1966 most closely parallel the CRC: The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

government that really wants to protect its children may make changes, despite a reservation, when NGOs document how children are being hurt by a specific law or practice. Getting international cooperation also requires well-documented facts.

The following discussion of each reservation will help NGOs to know both the law and what facts to look for.

## **2 Country by country review of reservations**

### **Bangladesh**

Bangladesh's two reservations are to the articles on religious freedom and adoption safeguards.

#### ***CRC Art. 14.1 - Freedom of thought and religion***

CRC Art. 14.1 says : "States Parties shall respect the right of the child to freedom of thought, conscience and religion".

Bangladesh's first reservation says : "The Government of the People's Republic of Bangladesh hereby enter our reservations on Article 14, paragraph 1."

By this reservation, Bangladesh has removed paragraph 14.1 from the Convention.

The first thing to notice about the reservation is how broad it is. CRC Art. 14.1 not only protects the child's right to religious freedom, but also protects "freedom of thought [and] conscience." From the drafting history of this article, it is clear that Bangladesh was concerned that Islamic law would be violated if the CRC permitted children to change their religion. Many other Islamic States had this same concern. But Bangladesh's reservation could have been worded narrowly to take care of this concern. Instead, it eliminated the entire paragraph, including both the right to "thought"- which includes political, historical and scientific ideas, as well as "conscience"- which includes more than religion.

National NGOs can ask their government to narrow the reservation to cover only the change of religion problem. The government could make a partial withdrawal of the reservation, or, at

least, a policy statement to narrow the reservation.

There are several good reasons for asking the government to narrow the reservation. First, during the drafting of the CRC, Bangladesh's only concern was a child's changing from the Islamic faith. In the early years of the drafting, Bangladesh was a member of the drafting group on the religious freedom article. The working group approved, through consensus, an article which gave the child the right "to have or adopt a religion or whatsoever belief of his choice and freedom." [ This wording was taken from the International Covenant on Civil and Political Rights, which Bangladesh has not ratified]. Several years later, Bangladesh objected to this wording, saying, "It appears to infringe upon the sanctioned practice of a child reared in the religion of his parents." Other Islamic States also objected because it would allow a child to change its religion.<sup>19</sup>

In later years, Bangladesh joined eight other Islamic States to propose a different text. During the debates, Bangladesh opposed giving children the "unmitigated" right to change their religion. Finally, a paragraph was put in the article to "respect the rights and duties of parents... to provide direction to the child in the exercise" of its rights (CRC art. 14.2). The present wording was then adopted by consensus.

Of the Islamic States that participated in the final drafting of the Convention and have since ratified it, Egypt, Kuwait and Tunisia made no reservation to Article 14. Only two of the Islamic participants in the drafting have made reservations. Pakistan said Article 14 would be "interpreted in light of the principles of Islamic laws and values." [Pakistan's reservation is discussed below.] Only

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19 The history in this and the following paragraph is from Johnson, *Cultural and Regional Pluralism in the Drafting of the Convention on the Rights of the Child*, in Freeman and Veerman (eds.), *The Ideologies of Children's Rights*, Kluwer (1992).

Jordan reserved to all of Article 14.<sup>20</sup>

Since the reservation goes far beyond Bangladesh's concern, this is a good reason to ask that the reservation be narrowed.

The second reason to ask for a narrowing is the high value placed on these freedoms in the Bangladesh Constitution. (Articles 28.1, 39.1, and 41.1.) While the Constitution may not require children to have these rights to the same extent as adults, these freedoms are nevertheless constitutional rights in Bangladesh.

If NGOs find cases where children's right to thought, conscience and religion are not respected, there are steps to take despite the reservation. First, NGOs can defend the rights of children using the Bangladesh Constitution. Second, there are other articles in the CRC which directly or indirectly protect a child's right to have and express a belief : CRC Arts. 12, 13, 16, 29(c) and (d), 30 and 31. The reservation does not affect these articles.

#### ***CRC Art. 21 - Adoption safeguards***

CRC Art. 21 says :

"States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the

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20 Several Islamic States that did not participate in the final drafting have ratified the CRC : those that did not make a reservation to Art. 14 were Sudan and Yemen; those that did make a reservation were Djibouti, Maldives and Indonesia [discussed below].

adoption on the basis of such counselling as may be necessary;

- (b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
- (e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs."

Bangladesh's reservation to this article says : "[A]lso, Article 21 would apply subject to the existing laws and practices in Bangladesh."

When the reservation makes Article 21 safeguards "subject to the existing laws and practices," what is Bangladesh promising to do? The government is saying that if any law or practice is contrary to the Article 21 safeguards, then it does not promise to make any changes. In other words, existing laws and practices are superior to CRC Art. 21.

Bangladesh may have made this reservation out of respect for Islamic law, which does not permit adoptions. If this was Bangladesh's reason, the reservation was not necessary.

The CRC was drafted very carefully in order not to conflict with the Islamic prohibition of adoption. There is no right to adoption in CRC Art. 20. Instead, there is a right to "alternative care" that is "in accordance with national law." Kafala [a type of care legally recognised in Islamic States] is specifically mentioned. Also, CRC Art. 21 only applies to those States "that recognise and/or permit the

system of adoption." From a legal point of view, therefore, an Islamic State does not need to make a reservation to either CRC Art. 20 or 21 to preserve the supremacy of Islamic law regarding adoption. However, if Bangladesh wanted to be extra sure, it could have made a narrow reservation simply stating that adoptions are not permitted between persons to whom Islamic law applies.

Since adoptions are permitted between non-Muslims, the reservation cuts out important safeguards. If the reason for the reservation is respect for Islamic law, then the reservation is too broad.

In their investigative role, national NGOs can study Bangladesh adoption laws and practices to find out what safeguards there are for both domestic and foreign adoptions, and if there are any adoption abuses. (Note that Article 21 requires that the best interests of the child be the "paramount consideration." This is a higher standard than "a primary consideration" in Article 3.1, or "their basic concern" in Article 18.1. Under Bangladesh's laws and practices, how much importance is given in decision-making to the child's "best interest"?)

Why did the government make the reservation and word it so broadly? National NGOs can discuss this with the government. But discussion can involve advocacy. If there are cases of adoption abuses, then documenting them is important in motivating the government to take reform action.

In advocating for adoption reform, NGOs can use other articles in the Convention. Many CRC rights overlap: the best interests standard (Art. 3.1), the child's right to be heard (Art. 9.2, 12.1, 13.1), special care and assistance (Art. 20.1), cultural continuity (Art. 20.3, 30), freedom from exploitation (Art. 11.1, 36), and the right to be cared for by the natural family (Art. 2.1, 8.1, 9, 10, 16, 18, 22.2), can all be applied to adoptions, despite the reservation.

In summary, the government did not need to make a reservation to CRC Art. 21 to protect Islamic law. NGOs can therefore ask for a withdrawal or narrowing of the reservation.

## China

China's one reservation is to the right to life.

### ***CRC Art. 6 - Right to life***

CRC Art. 6 says :

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

China's reservation reads :

"[T]he People's Republic of China shall fulfil its obligations provided by Article 6 of the Convention to the extent that the Convention is consistent with the provisions of Article 25 concerning family planning of the Constitution of the People's Republic of China and with the provisions of Article 2 of the Law of Minor Children of the People's Republic of China".

Article 25 of China's Constitution reads: "The State promotes family planning so that population growth may fit the plans of economic and social development." [ A copy of the Law of Minor Children was not available to the author.]

China's reservation makes it clear that abortion is not contrary to CRC Art. 6. From a legal point of view China did not have to make the reservation to do this. During the drafting of the CRC, the abortion controversy was settled by a compromise: unborn children are recognized in the Preamble only (which does not give any rights); Article 6 does not define "child", so the issue is left up to the law of each State.

But China's reservation does not say "abortion" or "unborn child." By using the words "family planning," does China's reservation go beyond abortion? Does it permit infanticide? for sex selection? to eliminate handicapped children? in cases of economic hardship?

Infanticide is a criminal offence under the Chinese Marriage



Laws.<sup>21</sup> The author assumes it is not permitted under the Law of Minor Children, but this must be verified by NGOs.

## India

India's one statement is about the economic exploitation of children.

### *CRC Art. 32 - Working children*

CRC Art. 32 reads :

- "1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.
2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
  - (a) Provide for a minimum age or minimum ages for admission to employment;
  - (b) Provide for appropriate regulation of the hours and conditions of employment;
  - (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article."

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21 The law says: "Infanticide by drowning and other acts harmful to infants are prohibited" (800910.3 art.15). The English translation leaves an ambiguity as to whether all infanticide, or only infanticide by drowning, is prohibited. Note that infanticide for sex selection or against handicapped children is discrimination prohibited by CRC Art. 2.

India's only statement when it ratified the CRC was about working children.

"While fully subscribing to the objectives and purposes of the Convention, realising that certain of the rights of the child, namely those pertaining to the economic, social and cultural rights, can only be progressively implemented in the developing countries, subject to the extent of available resources and within the framework of international co-operation; recognising that the child has to be protected from exploitation of all forms including economic exploitation; noting that for several reasons children of different ages do work in India; having prescribed minimum ages for employment in hazardous occupations and in certain other areas; having made regulatory provisions regarding hours and conditions of employment; and being aware that it is not practical immediately to prescribe minimum ages for admission to each and every area of employment in India - the Government of India undertakes to take measures to progressively implement the provisions of Article 32, particularly paragraph 2(a), in accordance with its national legislation and relevant international instruments to which it is a State Party."

The government did not say whether this is a declaration or a reservation.

Human rights advocates often talk about some rights being "progressive rights," that is, rights that cannot immediately be carried out fully because of a country's poverty. The government can only carry out these rights step-by-step, or progressively, as it develops economically. Many CRC articles specifically say that a right is "progressive" or subject to the State's "financial capacities" (Articles 4, 23, 24, 26, 27 and 28).

India may have intended its statement to be a declaration that Article 32 is such a progressive right. The government is promising,

in effect, to go as fast as it can in changing labour practices that affect children.<sup>22</sup>

Whether this is a declaration or a reservation, NGOs will still have to investigate child labour, set advocacy priorities, and lobby for government reform action in competition against other interests. The two biggest problems - poverty and the political power of businesses that use children - will be the same.

The economic exploitation of children is one problem that directly connects to what goes on in other countries: children's labour keeps the price of goods down, which is what foreign (as well as domestic) consumers want. When CRC Art. 4 refers to economic rights being carried out "within the framework of international co-operation," this should mean not just foreign aid but also international teamwork. As India's economy is linked to the world's, so must the work of national NGOs be linked to that of international NGOs on the problem of working children.

## Indonesia

When Indonesia ratified the CRC, it made a statement three paragraphs long, which contains both a declaration and a reservation.

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22 India may have intended the statement to be a reservation, however. First, it is doubtful that Article 32 is a progressive right because it requires a State to "take...measures to ensure" without any qualification for limited finances. Second, the words, "undertake...in accordance with national law", are like the words that other States have used in making reservations. Third, when it says that *immediate implementation* is "not practical," it could be referring to political problems such as the businesses that use child labour. However, for progressive rights, the only acceptable excuse is poverty, not politics. Finally, since the only concern specifically stated is the setting of minimum ages, the statement unnecessarily covers the whole Article 32 and not just 32. 2(a). National NGOs should ask the government to confirm whether this is a declaration or a reservation.

The first paragraph in Indonesia's statement reads:

"The 1945 Constitution of the Republic of Indonesia guarantees the fundamental rights of the child irrespective of its sex, ethnic origin or race. The Constitution prescribes those rights to be implemented by national laws and regulations."

This statement is a declaration, but why it was made is not clear. Perhaps it is an introduction to the next two paragraphs of the statement.

Moreover, the statement is not accurate. It says the Constitution "guarantees the fundamental rights of the child irrespective of its sex, ethnic origin or race." However, the Constitution only says: "All citizens shall have the same status in law and in the government and shall, without exception, respect the law and the government" (Art. 22.1). Notice that the Constitution only protects citizens and that sex, race and ethnic discrimination are not specifically mentioned.

The second paragraph in Indonesia's statement reads:

"The ratification of the Convention on the Rights of the Child by the Republic of Indonesia does not imply the acceptance of obligations going beyond the constitutional limits nor the acceptance of any obligation to introduce any right beyond those prescribed under the Constitution."

The wording is difficult to understand. But no matter how it is interpreted, the legal effect is the same : Indonesia makes no promise to change any law or social practice to live up to the CRC. This is a sweeping reservation.

It helps to understand the reservation by breaking it into two parts. The first part reads:

"The ratification of the Convention ... does not imply the acceptance of obligations going beyond the Constitutional limits..."

This part can be interpreted in two ways. The government might be saying that it will not take any implementation action if such

action is prohibited, or not authorized by (is "beyond the limits of"), the constitution. (However, it should be noted that the CRC does not require a State to violate its constitution, but to change it when necessary for implementation). Or the government might be saying that it makes no promise to change the constitution to carry out the Convention.

Neither interpretation should create any practical problems. Indonesia's constitution contains many human rights articles, which are probably enough to fully carry out the CRC. In the investigative role, NGOs can work with legal experts to compare the constitution to the Convention to make sure there are no constitutional problems in implementation.

The sweeping effect of the reservation comes from the second part :

"The ratification of the Convention... does not imply the acceptance of ... any obligation to introduce any right beyond those prescribed under the Constitution."

The phrase "prescribed under the Constitution" probably means a right made under the authority of the constitution, which would include legislation, regulations, decrees and orders.

The government appears to be saying that if a right in the CRC is not also found in an Indonesian law (constitution, statute, regulation, order, etc.), then the government does not promise to make a new law to implement the CRC. If Indonesian law conflicts with the CRC, there is no promise to change the law. If a social practice is contrary to the CRC, there is no promise to make a law for the purpose of changing the social practice. In other words, the government makes no promise to change.

Just how sweeping the reservation is can be shown by some examples. The constitution gives the right of education to "every citizen" (Art. 31). Let us assume that a non-citizen, a refugee, is discriminated against in education. The government might say that it does not have to obey the non-discrimination article (CRC Art. 2) because to do so would "introduce" a new right - the right of a non-citizen to education.

Another example: The constitution says, "The Government shall develop Indonesian national culture" (Art. 32). The government might say that the minority and indigenous rights in CRC Art. 30 go beyond the national culture recognised in the constitution, and therefore do not have to be implemented.

These examples are hypothetical effects of the reservation. However, we do not know yet how the government will apply the reservation.

What we do know is that the reservation changes the order of supremacy of the CRC. Indonesia's reservation puts everything, including social customs, above the standards of the CRC, which can be shown by the following comparison.

**CRC without reservations**

CRC

Constitution

Laws and administrative practices

Social practices

**CRC with Indonesia's reservation**

Constitution

Law and administrative practices

Social practices

CRC

The government has not refused to make changes, but by refusing to promise to make any change, it has rejected the idea of treaty standards and the duty to live up to those standards. No other Party to the CRC has gone this far in refusing to make promises to change.

Norway and Ireland objected to this reservation. A statement disapproving the reservation was made by Portugal. No State has rejected Indonesia as a treaty partner.

Indonesia may not have intended the reservation to be so sweeping. In their investigative role, NGOs need to discuss this reservation with the government. If the government intended a less sweeping effect, it can clarify its intention by making a policy statement. A clarification is important because if the reservation is misunderstood, the CRC will not be carried out correctly.

The third paragraph in Indonesia's statement says:

"With reference to the provisions of Articles 1, 14, 16, 19, 21, 22 and 29 of the Convention, the Government of the Republic of Indonesia declares that it will apply these articles in conformity with its Constitution."

Despite the word "declares," this is a reservation, not a declaration, because the intention is to limit the seven articles.

There are two confusing things about this reservation. Since the reservation in the second paragraph of the statement (discussed above) already has removed any promise to make changes, the third paragraph is unnecessary. Why, then, did the government specify these seven articles?

Another confusing thing is that most of these seven articles have no clear counterpart in the constitution. How, then, can they be applied "in conformity with" the constitution? For example, how do the words "in conformity with the constitution" limit the definition of the child (CRC Art.1), or adoption safeguards (CRC Art. 21), or refugee rights (CRC Art. 22)?

Several articles do have some counterpart in the constitution, but the effects of the "in conformity with" limitation are not clear. Several examples illustrate the confusion:

- The constitution guarantees "the freedom of the people to profess and to exercise their own religion" (Art. 28). Does the government interpret this as a collective right which, under the reservation, can limit the child's individual freedom under CRC Art. 14?
- The constitution says, "The government shall create and execute [a] system of national education provided by law" (Art. 31). Does the government have different education goals which it wants to override the goals in CRC Art. 29?
- The constitution states, "freedom of speech and of the press and similar freedoms shall be provided by law" (Art. 28). Are the CRC rights of privacy (CRC Art. 16) and information access (CRC art. 17) "similar freedoms" and, if so, how are they affected by the "provided by law" qualification?

The reservation to these seven articles is both broad and confusing. Four States objected to this reservation: Norway, Finland, Sweden and Ireland. Disapproval was expressed by Portugal.

The government would not have picked out these seven CRC articles if it did not oppose them or see some constitutional problem in implementation. National NGOs will have a lot of work to do in discussing the reservation with the government and trying to get interpretative statements or (partial) withdrawals.

Most of the work of the NGOs, however, will be to investigate and to evaluate - to find out what the actual practices are and how they affect children. Each specific advocacy strategy must then be built around the specific practices and their effects on children.

## **South Korea**

South Korea's reservation is to three articles: contact with parents, adoption safeguards and the right to appeal. The reservation says :

"The Republic of Korea considers itself not bound by the provisions of paragraph 3 of Article 9, paragraph (a) of Article 21 and subparagraph (b) (v) of paragraph 2 of Article 40."

### ***CRC Art. 9.3. - Contact with parents***

CRC Art. 9.3 reads :

"States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests."

South Korea's reservation removes Art.9.3 from the Convention. Article 9.3 applies when a child has been separated from a parent, which can happen in many different situations :



a) Family cases

- Parents never married - If the parents have never married, the mother might have total custody, with the father having no visitation rights. Also, there will be cases where a child does not know who the biological father is. When artificial insemination has been used, usually there is no ongoing contact between the child and the natural father.
- Divorced - When parents get divorced, visitation might be limited by law or a judge's decision.
- Separated - When parents are married but separated, the custodial parent may restrict visitation, or the separated parent might not want to see the child.

In all of these situations, contact has been denied. Under Article 9.3 the State must only "respect" visitation, not "ensure" it. However, any State action which limits contact - whether by law, court order, administrative decision, etc - must "respect" the right to contact, and can only be based on the child's best interest.

Because of the reservation, South Korea does not promise to respect visitation in family cases. The government is reserving the right to limit visitation for reasons other than the child's best interests. The government must still make the child's best interest "a primary consideration" under CRC Art. 3.1, but other reasons, such as traditional sex roles in child rearing, or a parent's privacy or convenience, can now be used.

Children in family cases will need strong advocacy. Because of the reservation there is a greater danger that children's interests will be sacrificed to the interests of adults and social customs.

Despite the reservation, a child of unmarried parents is protected from discrimination. Under CRC Art. 2.1, a child's right to visit a parent cannot be limited because of that parent's sex or marital status. Under Article 2.2, South Korea has promised to prevent this kind of discrimination.

b) Imprisonment and other State-caused separations

Separation also occurs when the State removes a child because

of abuse or neglect, or when the child is arrested for a crime. Mental illness and serious handicap can result in the child being put in an institution.

South Korea's reservation eliminates the right of contact and the best interests rule of CRC Art. 9.3 in these cases. However, other CRC articles give overlapping protection. Whenever a child is "deprived of liberty," there is a right to family visits "save in exceptional circumstances," under Article 39 (c). Under Article 9.1, the State can cause involuntary separation (involuntary from the parent's point of view) only when it is "necessary for the best interests of the child."

Separation also occurs when a parent is put in jail or a mental hospital. The right to contact in these case is probably covered by Article 3.1 : the child's best interests is only "a primary consideration."

c) International cases

A child can be separated from a parent by a political border, for example in the case of refugees and exiles, or when the parents are of different nationalities and the non-citizen parent is outside the country. South Korea's reservation does not affect these cases because they come under CRC Art. 10.2. (Also, Article 2 prohibits discrimination based on a parent's citizenship or other status.)

In summary, despite South Korea's reservation to Article 9.3, the right to family contact and the best interest rule still apply in State-caused separations because of CRC Art. 9.1 and 39 (c). The problem area is, therefore, family cases, which is where NGOs need to put their investigation and advocacy efforts.

***CRC art. 21 (a) - Adoption safeguards***

CRC Art.21 (a) reads :

"States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in

accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary."

CRC Art. 21 (a) protects children from several types of adoption abuses in both foreign and domestic cases. It requires the State to set up a court or agency ("competent authority") which will look at each adoption case to ensure that:

- any so-called "orphan" really has no parents or relatives;
- when a parent gives up a child, the parent is doing it voluntarily and fully understands the consequences. Counselling can be required to help the parent make the decision. (Although "counselling" is not defined in the CRC, it should be interpreted to mean whatever is necessary to help the parent, including legal, psychological and social worker counselling).

South Korea's reservation removes all of Article 21 (a).

National NGOs can take several steps. First, they can find out why the government made the reservation. Perhaps it was worried about the expenses of counselling. Notice, however, that the rest of Article 21 still applies. In all adoptions, despite the reservation, "the best interests of the child shall be the paramount consideration." No other article in the Convention places the child's interest above everything else. In adoption cases, a government cannot cut costs at the expense of the child; children's best interests are "paramount".

Whatever the reasons are, NGOs can ask the government to reconsider the reservation in the light of its promise to make the child's interest "paramount."

Second, NGOs can investigate whether the safeguards in current law and practice give enough protection. If there are actual cases of children being adopted against the will of the parents, or if the parents are being pressured or deceived, NGOs can show the government the

need for Article 21(a) safeguards.

Third, NGOs can study the adoption laws and practices. The "paramount consideration" requirement should be interpreted broadly to cover every aspect of adoption. This high degree of protection is necessary because adoption affects many other rights in the Convention, especially the rights to continuity of family, identity, culture, ethnicity and nationality (CRC Arts. 7.1, 8.1, 9, 10, 16, 18, 20.3, 22.2, 30). Do all the present laws and practices in South Korea make the child's best interest "paramount"?

***CRC Art. 40 (b)(v) - Right of appeal***

CRC Art. 40(b)(v) says :

"Every child alleged as or accused of having infringed the penal law has at least the following guarantees...if considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law."

Under Article 40 (b)(v), a child has the right to appeal in "penal" cases, which includes juvenile delinquency as well as criminal cases. An appeal can question both the conviction (the "decision") and the sentence ("measures imposed") , whether it be punishment or rehabilitation.

South Korea's reservation eliminates all of Article 40 (b)(v). The government makes no promise to permit appeals in penal cases.

The right to appeal is generally considered a basic right. [See International Covenant on Civil and Political Rights, Art. 14.5. South Korea has ratified the ICCPR].<sup>23</sup>

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23 Norway is the only other country that made the same reservation to the CRC 40(b) (v). Five other States made reservations, but they were qualified : Belgium, Denmark, France, Germany and Tunisia. Iceland made a declaration.

The purpose of an appeal is to correct mistakes. In penal cases the mistakes include :

- the conviction of innocent people;
- violations of procedural safeguards;
- unfair sentences.

Unfair sentences are a particular problem. While the CRC has strong procedural safeguards (Art. 37 (d), 40 (a) and (b)), it is weak on rehabilitation (Art. 37(b) , (c) and (d), 40.1 and .4). During the drafting of the CRC, a right to treatment or rehabilitation was considered but dropped; it is now only something that must be "take[n] into account." (CRC Art. 37 (c), 40.1; note that "reintegration" means rehabilitation).

There are several practical problems which limit children's rehabilitation. First, government policy, or the attitude of an individual judge, might favour punishment over rehabilitation. Second, rehabilitation is often limited by lack of money or training. The more dangers there are that a child will not get rehabilitation, the more need there is for safeguards such as the right to appeal.

In discussing the reservation with the government, NGOs can point out that CRC Art. 3.1 requires the best interests of children be "a primary consideration". Certainly protecting a child from mistakes in penal cases is in the child's best interest. NGOs can work with lawyers, social workers and other professionals to evaluate how well current safeguards work to correct mistakes. Also, NGOs can advocate the child's right to appeal under ICCPR, Art. 14.5.<sup>24</sup>

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24 If a child is put in an institution for the purpose of rehabilitation but does not receive treatment, then there is a CRC right to challenge the legality of the detention which is independent of the right to appeal. Under CRC Art. 37, "imprisonment...shall be in conformity with the law; "every child...shall be treated...in a manner which takes into account the needs of persons of his or her age"; and "every child...shall have the right...to challenge the legality of the deprivation of his or her

## Pakistan

### *All CRC articles*

Pakistan's one statement, which it expressly calls a reservation, applies to the entire Convention: "The provisions of the Convention shall be interpreted in the light of the principle of Islamic Law and Values."<sup>25</sup>

By this reservation, Pakistan is making Islamic laws and values supreme; there is no promise to change any law or practice to live up to the CRC if the change would violate an Islamic law or value.

Pakistan's reservation is one of the most sweeping that any State has made.<sup>26</sup> There are three things that make this reservation unusually broad : (1) it applies to the entire CRC; (2) not only are religious laws superior to the CRC, but also "values;" (3) the reservation is vague; we do not know which religious law or value the government believes is in conflict with which CRC article.

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25 The phrase, "interpreted in the light of," is ambiguous. If a word in the Convention is unclear, or if the application of a CRC article to a particular situation is uncertain, then the Convention must be "interpreted." The general rule is that a treaty is interpreted according to the ordinary meaning of the words used and in the light of the object and purpose of the treaty. It does not make sense to say that the CRC will be "interpreted in the light of" religious laws or values. (Also, the words "the principle of" add to the ambiguity.) Since the government has expressly labeled the statement as a reservation, the intention is to limit the promise to make changes. Unless the government states otherwise, the phrase should be interpreted to mean "subject to" Islamic laws and values.

26 Djibouti is the only country with a similar sweeping reservation : "...[Djibouti] should not consider itself bound by any provisions or articles that are incompatible with its religion and its traditional values." By the addition of "traditional" values, this reservation is broader than Pakistan's.

Does this sweeping reservation mean that Pakistan is not committed to the Convention ? There are positive and negative points to be made.

First, on the positive side, we can expect that governments will avoid implementing the CRC in ways that violate basic rules or values of their societies. Since many CRC rights are stated in general terms or are qualified, there is plenty of room for a government to interpret a CRC article so that it is consistent with fundamentals. While full implementation of the CRC may require countries to make basic changes in some attitudes and customs, this is not the same as changing fundamental laws or values. Also "changing" a fundamental is not necessarily the same as "violating" a fundamental. (For example, amending a constitution is different from violating one). What makes Pakistan's reservation stand out is not that the government is refusing to violate fundamentals. The reservation is unusual because the government can say so concisely what its fundamentals are ("Islamic law and values") and that it is candid in saying that it will not violate them.

An expert on Islamic family law who has studied the successes and failures of reform efforts has stressed the need to root reform in Islamic tradition :

"Some of the most important and fundamental reforms of [pre-Islamic] customary law were made by the Quran in order to improve the status of women and strengthen the family in Muslim society.

Profound social forces in modern times have affected the status and roles of women and the family in Muslim society. This process has been accompanied by reforms in Muslim family law which have sought to respond to as well as to foster social change.

While the reforms introduced through legislation and judicial decision in Pakistan might have been needed, their lack of a systematic Islamic rationale creates serious problems. First, it raises questions as to the Islamic character of the laws and the relationship of the reforms to the body of traditional law. Second, following

from this unresolved theoretical and methodological question, the apparent discontinuity of many reforms with traditional *firqh* brings them under heavy fire from the masses of the population who tend to be more conservative in outlook.

If reform is to be truly accepted by the majority of Muslims in each country, and if they are to produce a law that is both comprehensive and consistently developed, these reforms must be based on a systematic methodology whose Islamic roots can be demonstrated.

If Quranic values are applied correctly, Muslim society can accommodate social change in the twentieth century while preserving its link with the history of the Islamic tradition."<sup>27</sup>

Pakistan's reservation might be viewed as a promise to its people that it will implement each CRC right in a way that is consistent with, or rooted in, Islamic law and values.

Second, to carry out the CRC requires making value choices. Phrases such as "best interests of the child," the child's "well-being" and "appropriate measures" are not objective standards. They cannot be applied without making value choices. Also, the CRC refers many times to culture, religion, spiritual development and morals, all of which require value choices.<sup>28</sup> Pakistan is reserving the right to have

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27 Esposito, *Women in Muslim Family Law*, Syracuse Univ. Press (1982), pp. 4,48,99,101,132.

28 CRC references to culture : Art 4, 17(a) and (b), 20.3, 23.3, 30, 31.1 and 31.2; see also 5 and 21(a); to religion : Art. 2.1, 14.1 and .3, 20.3, 29.1(d), and 30; to morals : Art.10.2, 13.2 (b), 14.3, 15.2, 27 .1 and 32.1; and to spiritual health and development : Art.17, 23.3, 27.1, 32.1. Many other articles refer to such aspects of culture as privacy, dignity (and its opposite, degrading treatment), honor and reputation. Also, all articles referring to rights and duties of parents are closely related to culture.



the Islamic religion control value choices.

Why should any country be concerned about making its religion the reference point for value questions ? By ratifying the CRC, a State allows others to criticise its laws, policies and customs. A government may be worried that not all States will respect the principle of cultural diversity. One way a government might try to protect its people from having foreign values imposed on them is to state, at the time of ratification, which value system will be the reference point.<sup>29</sup>

Third, a State may be concerned that in the future a treaty will be interpreted in a manner contrary to the meaning of the words of the treaty or the State's intention at the time of ratification. A reservation is one way a State can try to prevent new interpretations from being imposed on it.<sup>30</sup>

Looking at Pakistan's reservation in a positive light, it may not show any lack of commitment to children's rights. On the contrary, by paying attention to moral and political aspects of implementation, the government may be showing that it is taking children's rights

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29 If Pakistan's only intention was to make Islam the reference point for value choices, it could have made a declaration instead of a reservation.

30 The history of the European Convention on Human Rights gives examples of the European Court using regional standards to strike down a law which reflects national standards. Also, by using the "living text" principle of interpretation, the European Court of Human Rights changes the meaning of words when, in its opinion, the treaty standards need to be brought up to date. For example, the European Court struck down a popular law that permitted corporal punishment on the Isle of Man. The Court said the present-day standard, not the standard at the time of ratification, is the test for when punishment is "degrading". The Court said that the European Convention "is a living instrument which... must be interpreted in light of present-day conditions. In the case now before it the Court cannot but be influenced by the developments and commonly accepted standards in the penal policy of the member States of the Council of Europe in this field." Tyrer Case, A. 26 (1978).

seriously.

However, there are negative things to say about the reservation. First, Pakistan is almost alone in making such a broad reservation. While many States probably are concerned that their religion or culture be respected, they did not think it necessary to make such a wide reservation. Second, while the Committee on the Rights of Child monitors implementation of the CRC, it does not have the right to make legal rulings such as those of a court.

Third, a number of countries made broad reservations when they signed the Convention, but later, when they ratified the CRC, they made only a few reservations.<sup>31</sup> Prior to ratifying the CRC, many States reviewed their national laws to see if there were any conflicts. Some of these reviews involved the public in conferences and workshops. As a result, States found it was not necessary to make broad reservations.

A reservation which makes the CRC subject to religious laws and values assumes that there may be a conflict. NGOs can ask the government if it has analysed the Convention to see if there are any conflicts with Islam. If there are no conflicts, then NGOs can ask that the reservation be withdrawn. If there are conflicts, NGOs can ask the government to identify them and to narrow the reservation so that only the specific conflicts are covered.

Fourth, while a State's desire to preserve the society's religious foundation must be respected, the State itself must respect diversity of religious beliefs. Three articles in the CRC guarantee religious freedom (Arts. 2, 14, and 30). But what is the effect of the reservation on these articles? For example, does the government consider that

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31 A State becomes a party to a treaty when it ratifies it, not when it signs it. When Kuwait signed the CRC, it made a reservation to "all provisions of the Convention that are incompatible with the laws of Islamic Shariah and the local statutes in effect." But a year and a half later, when it ratified the CRC, it made reservations to only two articles (Art. 7 and 21).

religious tolerance is a "principle of Islamic law and values"? Also, are the CRC rights of non-Muslim children affected by the reservation, or are only those of Muslim children subject to Islamic law and values ?

The Pakistan Constitution contains the right to religious freedom (Art. 20), as well as several articles that prohibit religious discrimination. Therefore we might expect that the government does not intend the reservation to affect the rights of non-Muslim children. However, NGOs must discuss with the government what its intentions are.

Fifth, the reservation is vague, especially because of the word "values." The biggest problem with a vague reservation, as with a vague law, is that a government may be arbitrary. When a problem comes up, the danger is that a vague reservation will be used as an excuse not to make changes.

It would help to clear up some of the vagueness if the government would explain :

- what is meant by "Islamic law", Shariah only, or *fiqh* also?<sup>32</sup>
- who can decide what "Islamic law and values" are, for the purpose of implementing the CRC?
- who has the authority to "interpret" the Convention "in the light of" Islamic law and values?

Looking at Pakistan's reservation in a negative light, it may look as if the government has not taken the CRC as seriously as other States have. In fact, when Sweden objected to Pakistan's reservation it said that the reservation "may create doubts about [Pakistan's] commitment" to the objective and purpose of the CRC. (Norway

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32 Shariah is that part of Islamic law which is divinely revealed. It is therefore considered infallible and unchangeable. *Fiqh* is the total body of Islamic law, which contains, in addition to Shariah, laws that are the product of human reasoning.

made a similar objection, while Finland and Ireland expressed their objections differently. No State rejected Pakistan as a treaty partner.)

Until the government explains why it made the statement, it is difficult to say whether it should be viewed in a positive or negative light. What is clear, however, is the action that national NGOs must take. A discussion of the Convention must be held between the government and NGOs, and the discussion must include the general public as well as religious leaders and scholars. How specific laws and practices impact on children must be looked at, then evaluated under the "best interests" standard, and then compared to the CRC articles as well as to Islamic laws and values.

The government's attitude towards children's rights will be important in how productive the discussion will be, but the attitudes of NGOs are also important. By focusing on how the CRC can help put religious values into practice, the dialogue can produce harmony rather than unnecessary confrontation.

## **Thailand**

Thailand made a reservation to three articles: the rights to name and nationality (Art. 7), refugees (Art. 22), and educational goals (Art. 29). The reservation says :

"The application of Articles 7, 22 and 29 of the Convention on the Rights of the Child shall be subject to the national laws, regulations and prevailing practices in Thailand."

By making this reservation, Thailand does not promise to make any changes if its laws or social customs conflict with these three articles. (While "prevailing practices" might only refer to government practices, this paper assumes it refers to social customs.)

### ***CRC Art. 7 - Name, nationality, etc***

CRC Art. 7 states :

- "1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be

cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless."

Because CRC Art. 7 covers many different rights, each will be discussed separately, but first one point needs to be made. All the rights in Article 7.1 are seriously qualified by Article 7.2: "The States Parties shall ensure the implementation of these rights in accordance with their national law." This has the same effect as a reservation: national laws are made the supreme standard over the CRC. Because of the built-in qualification of 7.2, Art. 7.1 gives almost no rights at all.

a) Registration of births

CRC Art. 7.1 says, "The child shall be registered immediately after birth." This does not say the child has the right to be registered. The wording is important. Because paragraph 7.1 makes registration a duty of the State, it is not a "right" qualified by 7.2.

While mandatory registration of births is in tension with the right of privacy (Art. 16.1), registration gives many benefits to children. Registration can prove the child's age, which is important when it comes to laws about child labour, marriage and voting. Registration shows family relationships, important in child support, inheritance, citizenship, some government benefits, adoption, and ethnic identity. When families are split by war or natural disasters, registration can help trace relatives. Registration also gives the government a data base to measure birth rates and population changes throughout the country, which can help in health and education planning. The government can also monitor infant and child mortality, and look for differences in geographic region, sex, ethnic group, or social classes.

Experience shows that poor people in general, and rural families in particular, register births less often. This is partly because of social custom and partly due to registration not being a government priority.

Because of these problems, and because of the importance of registration, the CRC Art.7.1 makes registration a State duty.

By the reservation, Thailand does not accept the duty; it makes no promise to change its laws or social practices to improve registration of births.

The first step NGOs can take is to ask the government why it made a reservation to this duty. Perhaps the government does not seriously object to this duty; maybe its reservation was worded too broadly and can be narrowed.

Second, NGOs can find out what the rate of birth registration is under current laws and practices. In particular, differences in geographic area, sex and ethnic groups should be looked for. Third, since registration is important to so many other rights, NGOs can advocate that other articles, especially CRC Arts. 2, 3 and 4, require registration for proper implementation, despite the reservation.

#### b) Name

CRC Art. 7.1 also says: "The child... shall have... the right from birth to a name..." This is qualified by 7.2; a State promises to implement the right only "according to national law." (Likewise, under Art. 8, the rights to identity and name that a State promises to protect are only those "recognized by law.")

Thailand's reservation makes the right to a name subject to its laws and regulations. This only repeats the built-in qualification of Article 7.2. However, the reservation goes one step further and makes the right to a name subject to "prevailing practices."

Even though the reservation reduces the right to almost nothing, it does not eliminate it from the CRC. This is important because all CRC rights are protected from discrimination under CRC Art.2. For example, if a child is stigmatised by a name because its parents were not married, Article 2 requires the State to end the discrimination because it is based on the parents' marital status.

NGOs can investigate if any Thai law or custom regarding names hurts children. Despite the reservation, the government must

“ensure the child such protection as is necessary” (Art. 3.2), and must protect the child from discrimination (Art. 2).

c) Nationality

CRC Art. 7.1 says, “The child... shall have... the right to acquire a nationality...” The purpose of this part of Article 7.1 is to protect children from being stateless, that is, not getting citizenship from any country at birth.

There are three cases where a child might be stateless, depending on a State’s law: (1) when each parent is a citizen of a different country, (2) when the child is born outside the country where the parents are citizens (as in the case of refugees, foreign workers and illegal immigrants), and (3) when a child has been abandoned and its country of origin cannot be determined.

CRC Art.7.1 does not give much protection against being stateless. Article 7.1 does not give a child born within a State’s jurisdiction the right to citizenship of that State. The words “to acquire a nationality” leave the State free to define citizenship as it sees fit. Furthermore, implementation of the right is qualified by paragraph 7.2.

Thailand’s reservation repeats the built-in limit of 7.2. The reservation also adds “prevailing practices,” but this should not make any difference because citizenship is defined by law, not custom. [Paragraph 7.2 refers to “relevant international instruments.” This is referring primarily to the Convention on the Reduction of Statelessness, which Thailand has not ratified.]

Much of the work of national NGOs will be the same with or without the reservation. NGOs will have to work with attorneys who are experts in Thai citizenship law to see if statelessness is a problem.

If any cases of statelessness are found, then Thai law must be examined to see if sex or marital discrimination is the cause of the problem. If so, then CRC Art.2 requires the government to change the

law, despite the reservation<sup>33</sup>. Finally, in deciding whether to give a stateless child Thai citizenship, the child's best interests must be "a primary consideration" (Art. 3.1). The "best interests" standard applies to a child's individual application for citizenship as well as to legislation on citizenship for children.

d) To know and be cared for by the parents

Finally, CRC Art. 7.1 says, "The child... shall have... as far as possible, the right to know and be cared for by his or her parents." These rights are also subject to the built-in reservation of 7.2.

The word "know" means to "know the identity of" the parent. There are several situations where a child might not know a parent's identity: the mother is not married (either she does not know or does not want to say who the father is), adoption, artificial insemination, sex abuse cases (rape or incest), and abandonment.

There are also many situations where a child is not cared for by both parents: unmarried, divorced or separated parents, adoption, social customs which place child-rearing with a member of the extended family, families separated by war, natural disasters and economic hardship, and abandonment.

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33 CRC Art.7.2 creates an exception to the non-discrimination Article 2. Some States grant citizenship based on place of birth. Other States grant citizenship based on the citizenship of one or both parents. While CRC Art. 2 prohibits discrimination based on a parent's "status," it probably does not prohibit making citizenship depend on the citizenship status of the parents. First, there is no evidence in the drafting history that CRC Art.2 was intended to prohibit this kind of citizenship law. Second, on the contrary, the drafting history shows that the right to nationality was qualified by CRC Art. 7.2 in order to permit each State to decide its own citizenship laws. Third, since the purpose of a citizenship law is to permit a State to discriminate (on matters of residency, voting, etc.), a specific article on citizenship will probably be interpreted as creating an exception to the non-discrimination article.



These problems are caused by a combination of things - the free choice of the parent, social custom, the law and external forces. Under CRC Art. 7, the State does not promise to do very much about these problems because of the "as far as possible" qualification and the built-in reservation of 7.2.

Thailand's reservation repeats the limitation of article 7.2. and adds "prevailing practices." The government is therefore not promising to make any changes in law or social customs to help children know and be cared for by their parents.

The rights to know and to be cared for by parents seem out of place in Article 7 because they are family rights covered under other articles (CRC Arts.9, 10, 18, etc.). However, they were placed in Article 7 because, like name and nationality, they are part of a child's identity. Article 7 is trying to emphasize that a sense of identity is important to psychological well-being, which is as important as physical well-being.

In the light of the weakness of these Article 7 rights, the advocacy work of NGOs is to see how other articles can protect the child's sense of identity and the rights to know and to be cared for by its parents. Many of the rights in the Convention connect in some way to the child's family rights : separation (3.2, 9, 10, 21, 25, 37(c)); unlawful interference (8); abuse (19, 34, 35), adoption abuses (21); economic problems (26, 27); refugees (22). Above all, the State must "ensure... such protection and care as is necessary;" and "in all actions concerning children" the children's best interests must be "a primary consideration" (3.1 and. 2). The reservation does not affect these other articles.

### ***CRC Art. 22 - Refugees***

CRC Art. 22 says:

- "1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present

Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention."

Thailand's reservation makes this article subject to "national laws, regulations, and prevailing practices."

CRC Art. 22 gives three protections to refugee children. First, the State promises to help refugee children get the rights which are "applicable" to them. This promise, however, does not give any additional rights to refugees. Under CRC Art.4, the State must already implement all CRC rights.

Second, the State promises to cooperate, as it "consider[s] appropriate," with NGOs and IGOs in their efforts to protect refugee children and trace their families. Again, this does not give additional rights to refugees. A State's promise to cooperate which is qualified by "as it considers appropriate" is almost no promise at all. Also, under CRC Art. 3, the State must give "protection and care" to all children and must always make their best interests "a primary consideration." Implementation of CRC Art. 3 would necessarily require cooperation.

Third, when a refugee child has no family (is "unaccompanied"), the State promises to give that child "the same protection" as any child receives under CRC Art. 20. Article 20 gives "alternative care" to children who are temporarily or permanently

without a family, which includes foster care, adoption (or kafala), and institutional care. The "same protection" should not be interpreted to mean the same general level of care, but the same programmes and benefits without any distinction for being a non-citizen or a refugee.

The right to the "same protection" is an important right, but it probably is not an additional right. CRC Art.2.1 prohibits all discrimination based on "status," which should include refugee status. In fact, CRC Art.2 goes further than CRC art.22 because no refugee child, even those with their family, can be discriminated against for being a refugee.<sup>34</sup>

If Article 22 does not give any special rights to refugee children, then why is it in the Convention? Part of the reason is historical. In the original draft of this article, refugee children were to be given two special rights: the right to family reunification and the right to be placed in their own cultural group. While these rights were dropped from the final draft, the article was still kept in the Convention in order to call attention to the needs of refugee children.

Thailand's reservation subjects Article 22 to its laws and "prevailing practices." The government does not promise to change its laws or social customs if either conflicts with CRC Art.22.

Because Article 22 does not really give refugee children any new rights, Thailand's reservation should not make any legal difference. However, the reservation should not be taken lightly. The government had a reason for making the reservation, and that reason may affect its laws and practices. The first step for NGOs is always to find out what the government's concern is.

Perhaps the government is worried that if it promises to give

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34 On the issue of discrimination, there is tension in the Convention between equality and special treatment. CRC Art. 2.1 prohibits discrimination "of any kind" based on "language, religion... ethnic or social origin", while CRC Art. 20 requires that "due regard shall be paid" to these same things. Since Art. 20 has application to a specific situation, it is an exception to Art. 2.

“the same protection” to refugee children, then the international community will take less responsibility for refugees. Or perhaps the government was concerned that giving “the same protection” would require it to remove unaccompanied children from refugee camps. (Removing children might break cultural continuity and force assimilation rather than prepare children for repatriation back to their home countries. The CRC requires Thailand to respect identity, nationality and ethnic minority culture, under Articles 8, 30 and 31.) Or the government may not have been willing to accept an article in which a key term “refugee” was not defined, especially when it had many Cambodians and Vietnamese with disputed status living in the country. (Thailand has not yet signed the 1951 Refugee Convention, nor the 1967 Protocol, which contain a definition of “refugee.” Furthermore, the concept of refugee has expanded over the past years, and there is no single definition accepted by all States. In such a situation, Thailand could have made a declaration of how it would interpret the term). However, there is no way of knowing what the government’s reason is without asking.

Although the reservation should make no legal difference, it may create practical problems. Government officials might think, incorrectly, that the reservation permits them to treat refugee children differently. An important part of NGO advocacy is educating officials: Thailand has promised to apply the non-discrimination and best interests articles (Arts.2 and 3) to all children, and this includes refugee children.

### ***CRC 29 - Goals of education***

CRC Art. 29 says :

“1. States Parties agree that the education of the child shall be directed to:

- (a) The development of the child’s personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;

- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilisations different from his or her own;
  - (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
  - (e) The development of respect for the natural environment.
2. No part of the present Article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State."

CRC Art.29 is different from the rest of the Convention because it does not speak about children's rights. Instead, it is a statement of the goals of education.

By making a reservation, Thailand does not agree with the statement of goals in Article 29. The government is saying that it can have other or different goals according to its "laws, regulations, and prevailing practices."

How will this reservation affect children? This question cannot be answered in the abstract. Only when the government says what specific Thai laws and customs it wants to promote, contrary to CRC Art.29, can the impact on children be discussed.

However, several points can be made about Article 29. The first point has already been mentioned - Article 29 does not directly give

rights to children, but only speaks of goals.<sup>35</sup> Second, the list of goals is complete or exclusive : the words "shall be directed to" rather than "shall include" probably do not permit other goals. Third, the goals are very abstract and idealistic (such as "full potential"); they describe one vision of an ideal society rather than a specific plan of education. Fourth, the goals reflect the ideals of the States and NGOs which participated in the drafting of the Convention.

Fifth, there is tension between Article 29 and the rights of the family. Under CRC Art.18.1, "Parents... have the primary responsibility for the upbringing and development of the child." It should follow from this that parents have the primary role in defining educational goals. Also, the CRC recognizes the right of the extended family and community to give "direction and guidance" (Art.5), as well as the child's own right of participation (Art.12.1). By stating the goals of education in Article 29, children, parents, and the community have been bypassed in the setting of the goals.

Sixth, in a way Article 29 gives more to adults than it does to children. Adults work for political change in many ways. They can work to directly change the laws or the politicians who write the laws, or they can work for future social change by influencing what children are taught in school. Perhaps the most important practical effect of Article 29 is the use that adults can make of the goals to shape what is taught in schools according to the adults' agendas. Article 29 not only recognises that schools are ideological battlegrounds for adults, but it has taken sides in the battle. However, the CRC does not require that the adults who are active in battles over school curriculum make the best interests of children their "paramount," or "basic," or even "a primary" consideration. (Parents must make their own children's best interests their "basic," but not paramount, concern under CRC Art.18.1.)

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35 The only specific right to education is the "progressive" right to free primary education in Art. 28. Literacy is an implied right under Art. 28, but is not an explicit goal under Art. 29. Handicapped children have qualified rights to education under Art. 23.

Article 29 is different from the other articles in the Convention and these six points help show what the differences are.<sup>36</sup>

What if a law or social practice encourages intolerance, inequality of the sexes, or disrespect for ethnic groups contrary to CRC Art. 29? Will the reservation hurt children by permitting these practices ?

No. The reservation does not make any practice legal; the government only rejects the statement of educational goals. Other CRC articles give rights to children to protect them from harmful practices. The government's promises to end discrimination (Art.2), to make children's best interest "a primary consideration" (Art.3.1), and to give "protection and care" (Art.3.2) are the keys to advocacy.

The investigation and evaluation work of national NGOs should not be affected by the reservation, but advocacy will change. In fact, NGOs can use the reservation to advantage. The debate on the goals of education is open in Thailand. National NGOs can focus the discussion on the best interests of children (as children now and as future adults), and involve the parents, community, government - and

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36 These six points can be shown by one example. Teaching respect for "national values" is on the list, but teaching respect for the nation itself is not. Nor is "respect" for the nation the same as patriotism and nationalism, which are feeling of admiration, affection, and devotion for one's country that go beyond mere respect. Likewise, teaching respect for the King of Thailand may be put under "national values," but "respect" may not be enough. While it is proper for a tourist to respect the King, does not the prevailing practice in Thailand call for more from a citizen ? Because the list of goals is probably exclusive, teaching an attitude beyond respect, for king or country, may not be a permissible educational goal under the CRC Art.29. By contrast, the African Charter on the Rights and Welfare of the Child has a different view on nationalism : "The education of the child shall be directed to... the preservation of national independence and territorial integrity; [and] the promotion and achievement of African Unity and Solidarity" (Art. 11.2).

the students - in the building of consensus.

Even though Article 29 does not directly give any rights, the reservation should not be taken lightly. Article 29 gives **implied** rights. For example, the goal of promoting "the spirit of understanding, peace, tolerance... among all peoples" implies the right of minority children to have the government take action to achieve this harmony.

Thailand has a reason in making the reservation, and NGOs will need to discuss this with the government.

## **Conclusion**

Several points came up again and again in the review of each State's reservations. First, NGOs must discuss the Convention with their governments. It is often unclear why a reservation was made, or even whether a statement is a reservation or a declaration.

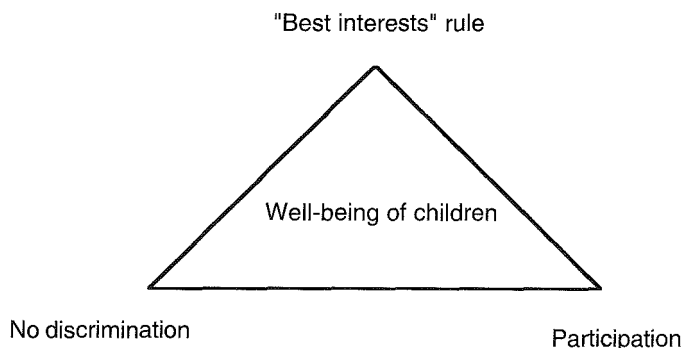
Second, NGO advocacy begins with finding out what is happening to children. A reservation does not change the investigation and evaluation work of NGOs.

Third, NGO advocacy will depend upon what the objective is : (1) to implement the CRC with a reservation in place, or (2) to get the government to withdraw a reservation, or (3) to narrow it.

Fourth, most of the problems facing children are covered by more than one CRC article. When there is a reservation, NGOs must use other articles, as well as State laws and social and religious values, and other human rights treaties. There are three articles that overlap so much that they can be said to underlie the Convention : the



“best interests” rule, non-discrimination, and the right to participate.<sup>37</sup> These three rights are so important to the well-being of children and so interrelated that it is helpful to think of them as a triangle :



These three rights are the keys to advocacy, whether or not there is a reservation.

Fifth, successful NGO advocacy must involve the general public and must emphasise how the CRC both reflects and supports traditional values.

Finally, while the CRC applies only to governments, NGOs can apply it to themselves, especially the best interests rule, non-discrimination, and the right to participate. By applying the “triangle of rights” to themselves at every step of the way, NGOs will not only be setting an example, they also will be making the Convention’s principles a reality for children right now.

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37 Best interests rule : Art. 3.1, 9.1, 18.1, 20.1, 21, 37 (c) and 40.2 (b) (iii). Non-discrimination : Art. 2; see also 22.2 and 30. Participation : while each CRC right is in some way a right of participation, some articles are explicit : 9.2, 12.1, 13.1, 23.1, 30, 31 and 40.2 (b).

## PART IV

**Recommendations**

**List of Participants**

## RECOMMENDATIONS

We, the participants of the training programme for persons working in children's organizations in Asia, organized by the ICJ and AGHS Law Associates, having shared our experiences and having learnt from the experts of international organizations, agree on the following recommendations and undertake to continue to work for the full realisation of children's rights:

1. We recognise, with gratitude to the ICJ, the importance and usefulness of this timely training programme. We also recognise that children's rights advocacy is an ongoing process and consequently there is a need for continued follow-up. We recommend that efforts be undertaken to carry out meetings, workshops and seminars, including field studies, on children's rights on the regional, sub-regional, national and local levels on a regular basis.
2. We recognize the importance of promoting and encouraging children and children's organizations' active participation, which is essential for the realisation of their rights. We urgently call for measures to be undertaken in this regard.
3. We welcome the goal of universal, unconditional ratification of the Convention on the Rights of the Child by 1995, as agreed upon by the participants at the World Conference on Human Rights, and express our willingness to support this goal. We call upon the countries which have made reservations to the Convention to withdraw these reservations.

We note that the following countries in Asia have still to express their support through ratification of this Convention: Afghanistan, Brunei Darussalam, Georgia, Iran, Iraq, Japan, Kazakhstan, Kiribati, Kyrgyzstan, Malaysia, Nauru, Oman, Saudi Arabia, Singapore, Solomon Islands, Tajikistan, Tonga, Turkmenistan, Tuvalu, United Arab Emirates and Uzbekistan.

4. The fact that the Committee on the Rights of the Child has initiated the process of preparing universal and comprehensive indicators permitting to monitor, in a uniform way, respect of the commitments entered into by the States Parties to the Convention on the Rights of the Child is welcomed. We urge the Committee on the Rights of the Child to ensure the rapid development of qualitative and quantitative indicators as they will constitute the major tool for national NGOs in their monitoring of the state of the children in their countries. The Committee was requested to pay special attention to information and advice that national NGOs and, in particular, children will provide.
5. We recommend that, after wide consultations on the national and international level, formats and systematic tools for information gathering be developed to assess the situation of children, including violations of children's rights.
6. We agree that the establishment of national coalitions of NGOs on the rights of the child is an immediate goal which will be pursued actively by the participants wherever possible. In the fulfillment of their responsibilities, national coalitions should ensure co-ordination with relevant national networks, such as those on human rights, women, environment, development, indigenous people etc.
7. We agree on the important need for education and training on children's rights. This includes first and foremost the children themselves, but also parents, professional groups of civil servants such as police, guards, teachers, social workers, labour inspectors, relevant community groups, trade unions etc. We further agree to exchange among ourselves the educational and training material that we have produced. The fact that Asia consists of a multitude of cultures and languages demands that such training materials be translated and adapted to correspond to the national/local realities as evaluated by national NGOs. It is recommended that all participants approach the appropriate national offices of international governmental organizations for financial assistance in the translation and reproduction both of

documentation in general and of training material in particular. It is further recommended that all participants report the results and the responses of the country offices of the IGOs to their requests to the NGO group.

8. It is generally recognized that information and documentation are the most powerful tools permitting national NGOs to carry out efficiently advocacy in favour of the implementation of all aspects of the Convention on the Rights of the Child. This includes, in particular, information addressed specifically to children. While information and documentation is sometimes widely and efficiently produced on the national level in the region, more is needed and there is presently an insufficient amount of input and support from the international level. The need for efficient and more rapid access to information from international NGOs and governmental organizations was clearly identified. We recommend that the NGO group on the Convention on the Rights of the Child explore the possibilities of increasing the capacity to build up a relevant documentation and data base and the capacity to ensure efficient information dissemination by the secretariat of the NGO group.
9. In the context of information flows, the mutually supportive roles of national NGOs and international NGOs were noted. The need for developing an improved pattern of information flow was agreed. We therefore agree to assess our information needs from the international level and communicate them to the secretariat of the NGO group, through the ICJ.

International NGOs should clearly formulate their needs for information from national NGOs and communicate their needs to them. The aim is to build up a two-way flow of information which corresponds to the needs of both national and international NGOs. Support from international governmental organizations is important and desirable.

10. We note that important efforts remain to be carried out on the regional/sub-regional level to ensure improved co-ordination, cooperation and exchange of information,

experience, documentation and materials. We agree to analyse our needs for increased co-ordination and share the results. Based on such a need assessment, steps should be taken to ensure that funding can be made available for such increased co-operation. It was agreed that national NGOs, in the development of regional structures, should be guided by the following considerations. We express the need to strengthen already existing networks (ASIANET, ECPAT, Child Hope, CWA, Working Group on the Human Rights of Children and Young People etc.). We express the importance of creating further networks in fields not yet covered and the usefulness of creating Asian-wide networks of professional groups (lawyers, doctors, teachers etc.) with a specific focus on children.

11. We recognise the important role the media and press freedom can and should play in creating awareness of, and in disseminating information about, the situation of children, their needs, problems and rights.

National media need to focus on children's rights and their violations more concertedly with a child-sensitive approach. The participants recognise their role in exploring ways of educating and sensitising the local and international media to ensure this coverage.

12. The difficulties of funding activities to promote respect for the Convention on the Rights of the Child and other international legal instruments related to children, such as the relevant ILO conventions etc, were noted. It was also understood that this is not only a regional problem but one for international NGOs as well. It was thus recommended that UNICEF develop a worldwide directory of funding sources for organizations dealing with children and children's rights in Asia, including indications of the type of activities each donor is prepared to support as well as other useful information, to permit these organizations to have an easier access to funding sources. National and local funding sources should be identified and training programmes on fundraising techniques developed.

13. The participants recall the indivisibility and interdependence of all human rights, as clearly enunciated in the Convention on the Rights of the Child, and call upon all governments in the region which have not yet done so, to ratify all major human rights instruments.
14. The participants recall the importance of making full use of, and maximising the efficiency of, the urgent appeal and solidarity mechanism, to ensure international attention to individual and massive violations of children's rights.

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