Introduction to Children’s Rights in Nepal: From Theory to Practice

March 2009
Introduction to Children’s Rights in Nepal: From Theory to Practice

March 2009
# TABLE OF CONTENTS

General Presentation of Nepal ................................................................................................................................. 3  
*Mrs. Paola Riva Gapany, IDE Deputy Director*

General introduction to the Convention on the rights of the Child (part I) ......................................................... 14  
*Mrs. Paola Riva Gapany, IDE Deputy Director*  
*Mrs. Clara Balestra, IDE scientific collaborator*

The Work of the CRC Committee: State reports and concluding observations ............................................. 26  
*Dr. Hc Jean Zermatten, IDE Director*

Introducing children’s rights at the constitutional level: the example of Brazil ................................................. 37  
*Mrs. Andressa Curry Messer, IDE scientific collaborator*

Convention on the Rights of the Child in relation to Constitution Building (part II) ............................... 44  
*Mrs. Clara Balestra, IDE scientific collaborator*  
*Mrs. Andressa Curry Messer, IDE scientific collaborator*

The Committee on the Rights of the Child: reporting process and medias contributions and their Role .......................................................................................................................... 51  
*Dr. Hc Jean Zermatten, IDE Director*

Media and Children’s rights ........................................................................................................................................ 53  
*Mrs. Paola Riva Gapany, IDE Deputy Director*

General introduction to the Convention on the rights of the Child (part II):  
The Committee on the Rights of the Child: the NGO’s contributions ................................................................. 61  
*Dr. Hc Jean Zermatten, IDE Director*

The Nepalese system of children’s rights and their implementation ................................................................. 64  
*Mr. Deepak Raj Sapkota*

Non-discrimination principle  
*Dr. Hc Jean Zermatten, IDE Director*  
*Mrs. Paola Riva Gapany, IDE Deputy Director* ......................................................................................................................... 69

Optional Protocol on children involved in armed conflicts ............................................................................. 87  
*Mrs. Clara Balestra, IDE scientific collaborator*

The Rights of the Child:  
First assessment, after twenty years ........................................................................................................................ 94  
*Dr. Hc Jean Zermatten, IDE Director*

Final report ................................................................................................................................................................ 107

Questions and Answers .............................................................................................................................................. 117
Nepal officially the Federal Democratic Republic of Nepal, is a landlocked country in South Asia and is the world's youngest republic. It is bordered to the north by the People's Republic of China, and to the south, east, and west by the Republic of India. Kathmandu is the nation's capital and the country's largest metropolitan city.

Nepal is a country of highly diverse and rich geography, culture, and religions. The mountainous north contains eight of the world's ten highest mountains, including the highest, Mount Everest. The fertile and humid south is heavily urbanized. By some measures, Hinduism is practiced by a greater majority of people in Nepal than in any other nation. A minority faith in the country, Buddhism is linked historically with Nepal as the birthplace of Siddhartha Gautama who, as the Buddha Gautama, gave birth to the Buddhist tradition.

Nepal had been a monarchy throughout most of its history. Prithvi Narayan_Shah, a Shah dynasty king, unified the many small kingdoms in 1768. Since then, the country had been ruled by a dynasty of kings. However, a decade-long civil war by the Communist Party of Nepal (Maoist) along with several weeks of mass protests by all major political parties of Nepal in 2006, culminated in a peace accord. The Maoists had insisted on the abolition of the monarchy, with Nepal remaining democratic, but becoming a federal state with an elected head. The newly elected Assembly met in Kathmandu on May 28, 2008, and, after a polling of 564 constituent Assembly members, 560 voted to end Nepal's 240 year old monarchy. The first President of Nepal, Dr Ram Baran Yadav was sworn in on 23 July, 2008.

Political geography

Nepal is divided into 14 zones and 75 districts, grouped into 5 development regions. Each district is headed by a permanent chief district officer responsible for maintaining law and order and coordinating the work of field agencies of the various government ministries.
Map of Nepal with zones divisions

Population Structure

<table>
<thead>
<tr>
<th>Data</th>
<th>Size</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population</td>
<td>28,676,547 (2005)</td>
</tr>
<tr>
<td>Growth Rate</td>
<td>2.2%</td>
</tr>
<tr>
<td>Population below 14 Years old</td>
<td>39%</td>
</tr>
<tr>
<td>Population of age 15 to 64</td>
<td>57.3%</td>
</tr>
<tr>
<td>Population above 65</td>
<td>3.7%</td>
</tr>
<tr>
<td>The median age (Average)</td>
<td>20.07</td>
</tr>
<tr>
<td>-------------------------</td>
<td>-------</td>
</tr>
<tr>
<td>The median age (Male)</td>
<td>19.91</td>
</tr>
<tr>
<td>The median age (Females)</td>
<td>20.24</td>
</tr>
<tr>
<td>Ratio (Male:Female)</td>
<td>1,000:1,060</td>
</tr>
<tr>
<td>Life expectancy (Average)</td>
<td>59.8 Years</td>
</tr>
<tr>
<td>Life expectancy (Male)</td>
<td>60.9</td>
</tr>
<tr>
<td>Life expectancy (Female)</td>
<td>59.5</td>
</tr>
<tr>
<td>Literacy Rate (Average)</td>
<td>53.74%</td>
</tr>
<tr>
<td>Literacy Rate (Male)</td>
<td>68.51%</td>
</tr>
<tr>
<td>Literacy Rate (Female)</td>
<td>42.49%</td>
</tr>
</tbody>
</table>

**Language**

According to Interim Constitution Nepali is only the official language (article 5, point 2). Other languages spoken as the mother tongue in Nepal are the national languages (article 5, point 1). According to article 5, point 3, all languages are accepted as official languages at the regional level. Besides, this part of the article is about native names and not about official language. The constitution does not state that Nepal written in Devanagari is the official name.
Religion

<table>
<thead>
<tr>
<th>Religion</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hinduism</td>
<td>80.6%</td>
</tr>
<tr>
<td>Buddhism</td>
<td>10.7%</td>
</tr>
<tr>
<td>Islam</td>
<td>4.2%</td>
</tr>
<tr>
<td>Mundhum</td>
<td>3.6%</td>
</tr>
<tr>
<td>Christianity</td>
<td>0.5%</td>
</tr>
<tr>
<td>Other</td>
<td>0.4%</td>
</tr>
</tbody>
</table>

Nepal and Children’s rights

Nepal has ratified the CRC on September 14th, 1992 without any reservation. Two periodic reports were presented to the CRC Committee in 1996 and in 2005.

Both OPAC and OPSC were ratified by Nepal in 2006 and 2007. The CRC Committee expects two reports:

1) CRC: 2010
2) OPAC: 2009
3) OPSC: has been sent to the OHCHR late 2002

Nepal has adopted many legislation related to children aimed at enhancing the implementation of the Convention; besides the 1992 Children Act:

(a) the Child Labour (Prohibition and Regularization) Act in 2000, which defines hazardous work and prohibits the employment of children under the age of 16

(b) the Kamaiya Prohibition Act in 2002, which codified the emancipation of bonded labourers, penalized employers engaged in Kamaiya labour practices, and established governmental Kamaiya relief funds.

Nepal has adopted a National Plan of Action for children (2005-2015) and has introduced child development policies in line with the Convention in the Ninth Plan (1997-2002). Many UN enhance the implementation of the Convention:

(a) the National Human Rights Commission, in 2000, in particular, the Child Rights Desk;

---

1 http://en.wikipedia.org/wiki/Nepal#Religion
2 Assessment on Implementation of Core Human Rights Treaties, Legislative Review, Series No 2, december 2008
(b) the National Commission on Women, in 2002;
(c) the national Dalit commission, in 2002;
(d) the children’s clubs, established in more than 20 districts;
(e) the national poverty alleviation fund.

Nepal is one of the poorest countries of the world where more than half the population lives in absolute poverty which mainly affects the most vulnerable groups and hampers the enjoyment of children’s rights. This reality, added to the foreign debt and the debt servicing, represents serious difficulties affecting the degree of fulfilment of the Government's obligations under the Convention³.

**Main problems related to children’s rights⁴**

∗ **Legislation**

The Committee is concerned at the inadequate measures adopted to ensure that national legislation fully conforms with the principles and provisions of the Convention. The Committee notes in particular the lack of conformity of legislative provisions concerning non-discrimination including in relation to marriage, inheritance and parental property, torture and corporal punishment. The Committee is also concerned about the gap between existing legislation and its practical implementation.

∗ **Non-discrimination principle**

The Committee is particularly concerned at the insufficient measures adopted to ensure the effective implementation of the principle of non-discrimination. It notes the persistent discriminatory attitudes towards girls, as reflected in the prevailing son preference, the persistence of early marriages, the notably lower school attendance of girls and their higher drop-out rate. It also is concerned at the different marriage age of girls and boys which is not in conformity with article 2 of the Convention. The Committee is further concerned at the caste system and traditions such as the deuki, kumari and devis.

∗ **No data collection**

The Committee is concerned at the insufficient attention paid to systematic and comprehensive data collection, identification of appropriate indicators, as well as to a monitoring mechanism for all areas covered by the Convention and in relation to all groups of children, including children belonging to minorities, to lower castes, children of very poor families, children in rural areas, disabled children, children placed in institutions, children victims of sale, trafficking and prostitution and children living and/or working on the streets.

³ CRC/C/15/Add.261,21 September 2005
⁴ CRC/C/15/Add.26121 September 2005
Birth registration

The Committee is concerned at the insufficient steps undertaken to ensure birth registration of children, particularly those living in remote areas, and to the adverse effects arising therefrom for the enjoyment of their fundamental rights.

Access to basic health services

The Committee welcomes the establishment of a working group to implement the Integrated Management of Childhood Illness strategy in 1997 and commends the State party’s efforts in improving the immunization coverage for children under 5, including the recent completion of the comprehensive measles vaccination campaign. The Committee nevertheless shares the concerns of the State party that the health and social services are under tremendous resource constraints and that the overall quality and availability of health care available to children in the State party is seriously inadequate, in particular among poor families and in rural areas. In particular, the Committee is concerned about:

(a) High rates of infant, under-five mortality and maternal mortality, and the low life expectancy in the State party;

(b) Continuing threats to survival and development of children by preventable childhood diseases, including diarrhoea, malnutrition, anaemia, intestinal infectious diseases; bacterial infection; measles and pneumonia;

(c) Inadequate prenatal and post-natal care which also constitute factors hindering child survival and development;

(d) Inadequate sanitation and access to safe and clean water, in particular in rural areas, which generally suffer from lack of services;

(e) Low awareness about health, hygiene and sanitation, particularly in rural areas and prevalence of traditional practices which could be harmful to the health of children, such as that of consulting witch doctors instead of modern medical facilities and withholding water from children suffering from diarrhoea.

HIV / AIDS

The Committee welcomes the efforts made by the State party to prevent and control HIV/AIDS including the establishment of the National Centre for AIDS and Sexually Transmitted Diseases Control, but remains concerned about the increasing incidence of infection and its wide prevalence, particularly among high-risk groups. The Committee is concerned at the very serious impact of HIV/AIDS on the cultural, economic, political, social and civil rights and freedoms of children infected with or affected by HIV/AIDS, including the Convention’s general principles and with particular reference to the rights to non-discrimination, health care, education, food and housing, as well as to information and freedom of expression.

Early marriage and traditional harmful practices

While acknowledging that the minimum age of marriage for girls is 18 years, the Committee shares the concern of the State party that the custom of early marriage is widespread in practice, in particular within certain ethnic and religious communities, and that girls, once married, are not afforded the protection for the enjoyment of their rights as children as enshrined in the Convention, including the right to education.
The Committee notes with concern that certain harmful traditional practices continue to prevail in the State party, most notably the caste system and traditions such as the Deuki, Kumari, Jhuma, Badi, Kamlari and Chaupadi, causing extreme insecurity, health hazards and cruelty to girl children. The Committee regrets the absence of legal prohibition and sufficient interventions on the part of the State party to address the harmful effects of these traditional practices on the enjoyment of rights by children who are affected by these practices.

**Disabled children**

While acknowledging the development of a national policy on persons with disabilities and the existence of laws that provide for the rights of children with disabilities, including the 1982 Disabled Protection and Welfare Act, the 1971 Education Act and the 1992 Children’s Act, and the establishment of a National Disability Service Coordination Committee in 2000 to develop and support programmes for persons with disabilities, the Committee remains concerned that:

(a) Implementation of these legislation and programmes have been ineffective and that the necessary resources have not been allocated by the State party;

(b) There is no national system for early detection and intervention with regard to children with disabilities;

(c) Insufficient efforts have been made to facilitate the inclusion of children with disabilities into the educational system and society in general, including efforts to change traditional attitudes towards persons with disabilities and improve the access to information, medical facilities, etc.

**Children refugees**

The Committee welcomes the adoption in August 2004 of an official policy that is grounded on the principle of non-refoulement, but it regrets that the State party has not yet ratified the Convention relating to the Status of Refugees, Convention relating to the Status of Stateless Persons or the Convention on the Reduction of Statelessness, and that there is no domestic legislation that covers the rights of refugees and asylum-seeking persons. In this regard, and given the fact that a large population of these persons are children the Committee is concerned about:

(a) The reports of discrimination and ill-treatment, including high incidence of sexual abuse of women and children in Bhutanese camps in Nepal;

b) The reports of deportation of Tibetan asylum-seekers to China by Nepal, including unaccompanied minors and the closure of the Tibetan Refugee Welfare Office in January 2005;

c) The rule that refugee status can only be sought by certain categories of asylum seekers, specifically, the Tibetans who arrived in Nepal before 1990 and the Bhutanese;

d) The restrictions on Bhutanese refugees on their freedom of movement, as well as their enjoyment of the right to health and education.

e) The Committee notes with regret the lack of information provided by the State party on the situation of internally displaced persons, including children, who have been forcibly displaced from their homes due to the ongoing armed conflict.
Schooling
While welcoming the development of the National Plan of Action on Education for All, and the Basic and Primary Education Master Plan (1997-2002) and the Basic and Primary Education Master Plan II (1999-2004), the Committee is seriously concerned that primary education has not been made compulsory and that the target set by the State party to achieve universal primary education by 2000 was never met and has been extended to 2015. The Committee also remains concerned about the low public expenditure in education and structural lack of resources, largely responsible for the shortage of qualified teachers, poor physical infrastructure, overcrowding in schools and material shortages in school. The Committee is also concerned about the high dropout rate, and that significant inequality exists in access to education, in part due to the hidden costs associated with schooling, and that a large proportion of girls and children from disadvantaged backgrounds such as Dalit children and children with disabilities remain deprived of educational opportunities.

Mistreatments, domestic violence
The Committee is concerned that corporal punishment and ill-treatment of children is prevalent in the family, in schools and in other institutions. The Committee is concerned about the provisions in the 1992 Children’s Act and the 1963 Muluki Ain (Civil Code) which provide for corporal punishment in the home, in schools and in other institutions and forms of childcare, which is in clear contravention of article 19 of the Convention. The Committee underlines the importance of specific legal prohibition of traditional practices which are harmful to children by law.

Children soldiers and children affected by war
The Committee is highly alarmed by the number of children who were killed in armed conflicts in the State party. The Committee notes with grave concern the reports of abduction and forcible conscription of children by the armed groups for political indoctrination and for use as combatants, informants, cooks or porters and as human shields. The Committee is equally concerned that Government forces target under 18s suspected of being members of the armed groups and about the highly alarming reports of disappearances and arbitrary detention and of Government forces allegedly using children as spies and messengers. The Committee is also deeply concerned that there are reports of detention of children under the 2004 amendment to the Terrorist and Disruptive Activities (Control and Punishment) Ordinance. The Committee is concerned about the direct effects of this violence on child victims, including child combatants, and about the severe physical and psychological trauma inflicted upon them. The Committee also expresses concern about children who were separated due to the conflict, including children who have fled to India, and that little efforts have been taken by the State party to reunite these families. The Committee is also concerned about the negative impact of the armed conflict on food supplies, education and health care.
Children in street situations

In view of the increasing number of children living and working on the street and the State party’s recognition that they are among the major victims of abuse, neglect and exploitation, the Committee regrets the paucity of information about specific programmes and measures to address their situation.

Child labour

The Committee notes with satisfaction the various efforts taken by the State party to eliminate the worst forms of child labour, in cooperation with the civil society actors, the donor community, and most notably, the International Labour Organization, including ratification of relevant ILO Conventions and national laws (see paragraphs 3 and 4 above), the planned adoption of a National Master Plan and of the Time Bound Programme. Nevertheless, the Committee remains gravely concerned about the significant proportion of children in the State party who engage in labour, which is often full-time, and extremely hazardous. The Committee is also concerned that the enforcement of domestic legislation in this area remains weak. The Committee is concerned about the shortage of labour inspectors due to the State party’s lack of financial resources. The Committee is also concerned that even though a large majority of the population, including children, work in the informal economy, the Child Labour Act which prohibits unlawful employment of children applies only to formal sectors of the economy.

While welcoming the abolition in 2000 of the Kamaiya system of bonded labour and the enactment in 2002 of the Kamaiya Prohibition Act, the Committee is concerned that a large number of Kamaiya children remain unreleased and continue to work as bonded labourers, and that many thousands of Dalit bonded labourers (haliya), including children, are reported to be working in agriculture in Western Nepal and in the plains. The Committee is particularly concerned that they continue to face serious difficulties in the areas of the right to housing, land, work and education.

Sale, prostitution and trafficking

The Committee takes note of the various efforts undertaken by the State party to combat child trafficking and welcomes the information that police officers are being trained in issues relating to sexual exploitation and trafficking of women and children. However, the Committee remains deeply concerned about the perversity of the phenomenon of trafficking and sale of children within Nepal and across the border for the purposes of sexual exploitation and bonded labour. The Committee notes with grave concern that certain groups of children are at a particularly higher risk of being sold and trafficked, including girls, internally displaced children, street children, orphans, children from rural areas, refugee children and children belonging to more vulnerable castes. The Committee further expresses concern that the existing legal protection for victims of trafficking, most notably the Human Trafficking Control Act, is inadequate, and that its implementation is seriously inadequate. The Committee is also concerned that the child victims of sexual exploitation do not receive adequate protection and recovery assistance.

Juvenile justice

While welcoming the establishment of Juvenile Benches in all the district courts to deal with cases relating to children in conflict with the law, and that training
programmes have been organized for law enforcement officials, including the Police Academy, the Committee remains of the view that the legislation and policies of the State party are not in conformity with international juvenile justice standards. The Committee reiterates its concern that the minimum age of criminal responsibility is set as young as 10, and that there is no official system of age verification in place. The Committee is also concerned about conditions of detention, and that persons under 18 are in most cases not separated from adults while in detention due to lack of juvenile detention facilities. The Committee is also alarmed that children are often brought to trial “without any proper investigation” and that a large proportion of juvenile cases are dealt by District Administration Offices which are quasi-judicial. The Committee is also concerned at the lack of educational facilities in prisons. The Committee is also concerned about the reports of persons under 18 held under the Terrorist and Disruptive Activities (Control and Punishment) Ordinance which has no set minimum age and grants security forces wide powers to arrest and detain any person suspected of being associated with the armed groups, including children.

Constitution making in Nepal

After a tumultuous history, a peace agreement, a new Assembly voting the abolition of monarchy, federalism has been accepted as the best way to represent democratically the different communities and regions of Nepal. Therefore, the first step to reach in instauring federalism and democracy is to draft a new constitution.

Following the example of South Africa, the full participation of all concerned people, communities, and organizations are crucial to the constitution making. It ensures the representation and taking into consideration of all interests from different communities and professional groups. Consequently the inclusion of social and marginalized groups is recommended, such as women’s rights groups, Dalits representatives… and what about children? So far, it seems that the debate has focalised on minorities’ issues and women, which situation have been always endangered by the social system of casts. However, due to the high number of children living in Nepal, the numerous problems and challenges faced by professionals, introducing children’s rights in the new constitution represent a wonderful opportunity for:

- Raising awareness about the CRC
- Reinforcing children in their rights
- Insuring them full participation to all matters they are concerned with
- Taking them seriously, as main actors of their life and not only object of the
  - authority of their parents or communities, and thus potential victims
- Empowering them to face a not child friendly environment

As Brazil did, medias play an important role in this process. They have to assure the transparency of the constituent debate and underline the importance of children’s rights in the constitution. They are the link between civil society and politicians, members of the constituent assembly.

Federalism has been chosen by the politicians in order to establish the basis for a new democratic Nepal.
The term federalism describes a system of the government in which sovereignty is constitutionally divided between a central governing authority and constituent political units (like states or provinces). Federalism is a system in which the power to govern is shared between national and state governments, creating what is often called a federation. For many new born States, federalism is seen as the best solution to reach democracy. But each country or State has to invent or create its own democracy and thus federalism.

In the case of a strict federative country like Switzerland, federalism may be sometimes an obstacle to the egalitarian implementation of rights.

________________________

5 http://en.wikipedia.org/wiki/Federalism
GENERAL INTRODUCTION TO THE CONVENTION ON THE RIGHTS OF THE CHILD (PART I)
Mrs. Paola Riva Gapany, IDE Deputy Director

I. Introduction

November 20th, 1989, the United Nations promulgated the International Convention for the Rights of the Child, the founding text of a new concept: Children’s Rights. Can we qualify this idea as “revolutionary”? It is perhaps too early to answer such a question. Nevertheless, the more I read the “Convention”, the more I find it Innovative, Participative, Egalitarian, Universal.

It is first of all Innovative, because it completely modifies the vision that we have of the child, going from the conception of a paternalistic protection of children to a veritable status of the child: from the child-object (where he was the property of adults), he becomes the child-subject, entitled to certain rights. It is a new child that is born.

The Convention is Participative, in the sense where the child was given the right to express himself in article 12: the child who has the capacity of forming his or her own views has the right to express those views freely in all matters affecting him, views that must be given due weight in accordance with the age and maturity of the child.

The Convention is Egalitarian in the sense where its first principle rests on the idea that all rights must be granted to all children without exception (art 2 ch 1).

The Convention then dons a Universal character since 191 of 193 States are party to this constraining text. It’s exceptional. This enthusiasm must not only be saluted for the momentum that expresses towards the new concept of the child subject of rights, but especially for the scope that it confers to this legal instrument. Indeed, one can say that the rights of the child, through the support of almost all States Parties, become a new legal reality impossible to circumvent.

This exposé will develop aspects and clarify them.

1. The Convention: Presentation

The United Nations Convention on the Rights of the Child (CRC) was adopted on November 20, 1989 by the General Assembly of the United Nations, exactly 20 years to the day, after the Declaration on the Rights of the Child, also adopted by the General Assembly of the UN (Nov.20, 1959). This Declaration can be considered as the basis for the CRC, although a great amount of reflection was needed during 10 years (1979-1989) to confer on a new status of the Child. In addition, we went from an international declarative based document to a constraining document that holds the countries that sign and ratify it accountable.

The treaty was open to signature and ratification on January 26, 1990 and was entered into force on September 2, 1990. In less than 10 years, the CRC has been signed and ratified by
almost all the nations of the globe (191 of 193), to the point where we can say that it has become a universal instrument, a reference in the Rights of the Child for the entire world. Nepal ratifies it on September 1990.

The CRC has integrated in its layout the **existing material of child protection** (child labour, children and armed conflict, health, education…) and the **general guarantees** offered by “human rights”, but also went a step further,

- By becoming an **instrument specifically related**;
- By attempting to encompass all the fields in which children are found (**integrated conception**).

If it is the success of a movement born at the beginning of the century, aiming to bring a particular look and benevolence towards children, it is however not an end in itself; it is a reference on which the “rights of the child” movement rests, but it is also the starting point for other instruments and will inspire other treaties. This has notably already been the case in the field of:

* **Juvenile Justice**: the Riyadh Rules (90) and the RDL Standards (Havana Rules 90) and the Beijing Rules
* **International Adoption**: the Convention of The Hague on the Protection of Children and Cooperation in Respect of Inter-country Adoption adopted on 10.05.1993 and put into force on 23.01.1995,
* **Child Labour**: revision of the Convention 138 of the ILO on the minimum age of admission to the workforce of 26.06.1973 and the Convention (no.182) on the Worst Forms of Child Labour and the immediate action for their elimination.

All these texts draw their inspiration and justification from the CRC.

The CRC is the **longest text for Human Rights** and is certainly the **most exhaustive** and comprehensive. From the beginning, its vocation is universal. It is not a neutral instrument, but one which has a **consensual basis** since it cannot be the holder of such an ideology, policy or philosophy compared to another, but that it must take into account the range of traditional values, cultures, political systems and of the convictions that exist in the world; it can thus appear in certain views, too “fuzzy” and “frilly”. But it must be given credit for having succeeded in finding a universal consensus on the basic principles. It also has the advantage of addressing the notion of child protection in the field of human rights, allowing judicial status, whereas, before it was only an ideal of nice principles and benevolence. **Notorious progress.**

2. The Convention: Content

First of all, it is clear to whom the Convention applies (art.1) and defines a child as “**every human being below the age of eighteen years**”. Next in the substantial part composed of 41 articles, it affirms a series of child rights. It is not only a direction of **rights granted to children**; it is above all, the terms of the **obligations that the States parties** engage themselves to respect to favour the growth of a child part of a harmonious family, a family that is supported by the State and a basic welfare system. The rights that are listed are **civil, social, economic and cultural rights**, to resume human rights terminology. Unlike what many think, there are no “purely political” rights stated by the CRC. We could be tempted to see among these 41 articles some rights that are more important than others, and define a “core” of child rights, meaning extract certain rights to say that they are more important than
others. This is nevertheless a dangerous position to take since it tends to make us think that certain rights should be defended over others and this would bring us to weakened situation for the rights that would make up this small intangible circle. All the rights present in this treaty must be considered with the same value on a level playing field.

However, we can group together the rights in the following manner:

a) **The rights linked to “the person” of the child**

   According to Article 1, it consists of the “born” human being (the question of the protection of the right of a child being born is left to the appreciation of the States Parties) until the age of 18. Here are the fundamental rights linked to their existence.

   - The right to life and development (art.6)
   - The rights to not be discriminated against (art.2)
   - The right to a name, and a nationality (art.7)
   - The right to know and be cared for by his or her parents (art.7)
   - The right to preserve his or her identity (art.8);  

b) **The rights regarding the family**

   Since the child is considered as the key member of the base of society, the following principles are highlighted:

   - The principle of primary responsibility of the parents in respect of the National legislation (art.5)
   - To ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child (art.18)
   - To ensure that a child shall not be separated from his or her parents against their will (art.9)
   - The right to family reunification (art.10)
   - The right not to be subjected to arbitrary or unlawful interference with his or her family (art.16)
   - The protection against the illicit transfer and non-return of children abroad (art.11)
   - The protection against passive or active abuse while in the custody of the family (art.19)
   - The priority given to the solutions similar to foster care (art.20) or to adoption (art.21) when a child is deprived of his/her home of origin.
c) **The role of the community**

First and foremost, there are the measures of protection or social benefit:
- Access to all educational mediums (art.17)
- The protection for child refugees (art.22)
- The right to special care for disabled children (art.23)
- The right to a high standard of health and medical treatment (art.24) to abolish traditional practices prejudicial to the health of children (art.24)
- The right to social security (art.26)
- The right to education (art.28)
- The right to rest and leisure (art.31)
- The protection against performing work (art.32)
- The protection from the use, production and trafficking of controlled substances (art.33)
- The protection against all forms of exploitation (art.36), the sale, traffic and abduction (art.35), and sexual exploitation (art.34)
- The protection of children who are affected by armed conflicts (art.38)
- The right to measures of recovery and reintegration for child victims of exploitation (art.39)
- The protection against torture, capital punishment and life imprisonment (art.37 which has enormous importance, to be considered notably in relation to art.40).

d) **The new rights related to the participation of the child in City life.** Here lies is the principle innovation of the CRC:

without going too much into political rights, the CRC recognises that the child has an active role, specifically with:
- The necessity to be provided with the opportunity to be heard in any judicial and administrative proceedings affecting the child (art.12)
- Freedom of expression (art.13)
- Freedom of thought, conscience and religion (art.14)
- Freedom of association (art.15)
- The respect for his or her private life (art.16)
- The respect of human dignity (art.28)
- The respect for a child belonging to such a minority, to enjoy his/her own culture to practice his/her own religion or to use his/her own language.

e) **The rights relating to the administration of Juvenile Justice**

Article 40 of the CRC, which is the longest of this treaty, gives importance to minors in conflict with the law since the circumstances surrounding the child occupy a
particularly uncomfortable position. The child can also be a victim and a witness and be stripped of his/her rights. Article 40 develops at the same time respect of fundamental rights, (basic guarantees like: presumption of innocence, the right to an attorney, the right to an independent and partial hearing, the possibility for appeal, etc.) and the general principles desired in juvenile justice (for example putting into place specialized instances, the elaboration of a minimal age of intervention, the priority of health and education, the development of alternatives for incarceration and institutional solutions).

f) **The role of the State**

It can be seen as the reverse side of the rights for the child, since it is the State that must take on many tasks, either primarily, or subsidiary in relation to the family, like

- The best interest of the child shall be a primary consideration (art.3)
- The State shall assure that the child’s point of view is heard (art.12)
- The child shall have the right to freedom of expression (art.13), of thought, conscience and religion (art.14), of association (art.15)
- The enjoyment of the highest attainable standard of health (art.24) of social security (art.26), and education (art.28)
- A guarantee of protection against all forms of exploitation (art.32, 33, 34, 35, 36, 37, 38)
- The establishment of authorities and institutions specifically applicable to children (art.40).


The Convention, in its vision to settle everything, could not have foreseen all the situations of protection is a precise manner and a certain number of poignant problems have appeared in current events over the past ten years: two problems captured the attention of the States:

a) **the question of recruitment of children in armed conflict**

b) **sexual exploitation of children.**

Thus, two optional protocols were adopted and opened to signature and ratification by the States. Both protocols were signed by Nepal, on January 2007 for the OPAC and January 2006 for the protocol of sexual exploitation (OPSC)

a) **Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC)**

This field has become a very sensitive issue following several interventions, notably those of the Red-Cross and the Red-Crescent in 1995 requesting that they raise the age of youth that can be involved in armed conflict and the disputes that had taken place in a certain number of war zones where children had been used for military ends. It also appeared that there was a necessity for harmonization of this field with the CRC on one side (protection for those under 18) and on the other, the new convention No 182 on the child labour, which prohibits, the forced recruitment of children in armed conflict. Consequently work from experts led to an Optional Protocol, one that the
States can accept or not, to ratify. There is thus no obligation, but obviously an insistent desire for them to do so.

The principal content of this protocol is to set the age limit for involvement in armed conflict to 18 years, while the CRC (art.38, 3) fixed the age limit to 15. This is an important principle that should suffer little or no exceptions. Nevertheless, the protocol allows the recruitment of children in armed conflict under the age of 18, but only under certain conditions (voluntary, consent from the legal guardian, complete information on the obligations of military life, exclusive commitment to the national armed forces or military school). Child recruitment by non-national armies (militia etc.) and at fortiori, their implications in hostilities is prohibited. It is asked that each State, in accordance with the main principles of the CRC, make this protocol accessible to both adults and children, and to support not only its acknowledgment, but also its application. The rules of control by the Committee for the Rights of the Child are also applicable to the protocol.

To this day, the protocol has been signed by 124 States and ratified by 127 States.

b) **Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC)**

Following the work of the Stockholm Conference of 1997, a resolution from the United Nations asked for the preparation of an additional protocol regarding these problems.

This subject has become painfully obvious due to the explosion of pornographic Internet sites implicating children as well as sex tourism, where children from underdeveloped countries are easy pray for wealthy and immoral adults who are sometimes acting with the help of local agencies. The question regarding the sale of children, also illegal adoption and the organ trafficking has reinforced the uneasiness surrounding this drama.

The Protocol anticipates that the States must explicitly prohibit the sale of children, child prostitution and pornography that involves children (art.1); the different prohibited behaviours are defined in a rather large manner in article 2, and article 3 imposes that the States legislate in order to penalise this type of action towards children. Forced child labour, organ trafficking, illegal adoption are also taken into account in article 3. Article 4 allows double territorial incrimination, either in the country of origin of the person at fault, or the country of origin of the victim. Article 5 extends itself on the necessity to consider infractions of art.3 allowing extradition between countries with treaties, whereas part 2 of art.5 foresees that in the case of non-existent bilateral treaties, the additional protocol must be considered as a viable judicial base to justify extradition. Article 8 focuses particularly on child victims, on their rights and the aid that must be given to them during penal procedures as well as in the prospect of their treatment. It is also evident that this protocol mainly looks to the prevention of abuse and to the surveillance of this kind of situation and also devotes a few lines to information.

This protocol becomes binding for the States that ratify it, and is therefore subject to the regular controls of the Committee for the Rights of the Child.
To this day, the protocol has been signed by 116 States and ratified by 131 States.

4. The Convention and the primary interest of the child

The notion of the best interest of the child is the key to many judicial systems where the child protection services intervene. In art.3 ch.1, the CRC promulgated: “In all actions concerning children, whether undertaken by public or private Social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.

By this provision, the CRC is the unit of measure by which all decisions must be weighed relative to the child—whether he/she participates of not— it is the criteria for the primary interest of the child. This notion is not new, in the sense that a number of prior legislative texts, either at the international level (for ex. Convention of The Hague of 20.10.80) or at the national level, were previously aware of the notion of the interest of the child. But here we are talking of Primary interest. Is this an Innovation?

The criteria remains blurred and vague; that is not a deficiency on the part of the CRC, but a deliberate expression of will of the legislators to maintain a criteria that is as wide and flexible as possible, in order to not deprive this text of its mission. Indeed, it was needed in order to avoid the trap of favouring one ideology to another, to render such provisions the inability to implement in certain parts of the globe, to find a common denominator sufficiently flexible and acceptable for the whole world, and find the most adequate expression as possible. That is the Primary interest of the child. This expression as well as the above criteria has already received much criticism, notably the adjective “primary” that supposes that the interest of the child surpasses all other interests. This is obviously not the case, it simply indicates that any and all decisions concerning a child, should consider his/her best interests; we therefore find ourselves performing the traditional function of this criteria, first the function of control (it belongs to the judge, the judge must control this and that duty of the parents by relying on the best interest of the child) and secondly, the function of solution (it is the interest of the child that determines the choice of the authorities to make this decision or that one). It is now that we see that the adjective “primary” only serves to insist on the importance of the criterion and not to make this criterion primary or superior to another, where the interest of the child would then serve to rule conflicts of interest, and to rule conflicts of rights…

Nevertheless, in light of this criticism, it must also be said that this concept has the advantage to be evolutionary, which means to take into account the variations of space and time, and that it is rich since it allows us to, in a text as fundamental as the CRC, respect the richness, traditions and socio-cultural values of each country at the base of its social contract.

The primary interest of the child is a sort of “sweeping” concept on the grand scheme of the rights of the child; passing on this notion would not be realistic and it would raise the question of replacing it. But with what?
III. The Rights of the Child, Instrument of Peace

The Convention and the child, question of rights

It appears that, we passed from the conception of a paternalistic protection of children to a true Child Statute. In the traditional image, a child is a human in becoming and he/she does not have interests but needs which can be absolved thank to charity, he’s statute in society is conceded by benevolence for youth. With the new image, a child has specific interests, he has rights that society has to fulfill. He is a full person and not a future adult. Admittedly the child does not have political rights (right to vote or to be elected), but he/she possesses autonomous rights and rights that can put forward, even against the will of his/her family, his/her representative or the State, for as long as he/she has the capacity of discernment of these rights.

This is indeed a huge step: we have gone from the situation where the child is an object (the property of adults) to the position where the child has certain rights that apply only to him/her. And thus, a new Child is born. Must we go even further and say that we find ourselves in the presence of a KING-child, who can do anything? Or of a child, rival to his/her own family and destroyer of parental authority? NO.

First of all, we have to see that throughout the historical development of children’s rights, the primordial element (or is it paradoxical?) is family, described as the natural and fundamental element of society. Since the Declaration of 1924 (to the CRC of 1989 right up until the Convention of The Hague of 1993), the family was the core element (the smallest democracy, according to the terms of the International year of the family 1994). Admittedly the family has undergone great transformations since 1924, nevertheless, we still count on it and we do not cease to reaffirm its primacy, notably by the State.

That being said, the child is then certainly considered as an independent person and a subject of rights, but the child is still considered as a member of the family. It has often been said that the rights of the child are in opposition of parents; on the contrary, the rights of children can only be considered as the rights of the family, as they themselves belong to this core element. Child rights are forcibly limited by this belonging to the child’s family.

What has changed is that children have a certain number of rights that they can exercise independently from adults, but without impeding on the notion of child-member of his/her family.

The third element is that the child is a member of society. We have a tendency today to say of our civil society; he/she is not yet entirely a citizen, but all movement in legislation underlines the necessity to actively implicate the child in the decisions that directly affect him/her, be it in situations where he/she is confronted by the law (civil or penal) or in situations where, in a broad sense, the State, through its administrations, intervenes. To make him/her a partner in the decision making process is also preparing him/her to become an actor of his/her destiny and to make him/her aware of their responsibilities in light of their duty as a future citizen.
There is thus no concurrence between the children of the State, since the rights of the child must prepare him/her for its status of member of State.

We are undoubtedly far from the notion of omnipotent KING-child, even if the CRC has not stated the duties of children; children, by the simple fact that we acknowledge them as human beings, attached to a family and future members of State, are and do not need to be enumerated. In fact the CRC does nothing else but recognize the existence (or the co-existence) of the triad: child-parent-State, each is an element of this triad having a relatively clear role and responsibility.

2. The Child’s Right to Speak

As was mentioned before, Article 12 foresees that the child who is capable of understanding has the right to freely express his opinion regarding all questions that concern him and that his/her opinion must be taken into account with the necessary nuances due to his age and his degree of maturity. Consequently, the child must have the possibility of being heard in all forms of procedures where decisions are taken in his regard, either directly or by ricochet, through representatives; (he must be heard by himself or through the intermediary of a representative or suitable organization.)

Thus, we understand that all fields of law where the statute of the child is concerned, are touched by this provision: humanitarian law, family law, protection law of course, but also administrative law when it is a question of a child and criminal law for minors. But what especially interests our subject is that the child must also be heard within his family, at school, on sports fields, societies that they frequent and in all the social demonstrations of his community.

Listening, in our opinion, is also allowing children to listen to one another: if the child is entitled to speak, then all children are entitled to speak and all children must also listen to what their friends have to say.

The fact of allowing the child to speak does not mean giving him reason in all cases, but means allowing him to associate himself with the debate. Thus, this means learning a new method of social functioning, all, from a young age: participate, speak, but also listen, understand, seek to get along, concede, admit and coexist. Perhaps we have not yet well understood the range of possibilities given to the child to take part in the life of his community (family, school, recreation, social in the broad sense).

It is in no case subversion; it is a very natural evolution, which leads us towards this state of mind, which should govern the relationship between individuals. Towards respect and mutual comprehension, an important basis of durable peace.

3. Non-Discrimination

Just after the definition of the Child, the Convention wrote as its first principle the idea that all rights must be granted to all children without exception. Indeed, art.2 ch. 1 foresees:

“States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any
kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex. Language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”

This article, placed at the beginning of Convention, (if we dare say,) sets a tone and indicates two things:
- first, we cannot treat children in a different way relative to elements beyond their control (sex, race, colour, language, nationality etc.);
- secondly and as a corollary principle, we must recognize the equality of children. We can otherwise be astonished that Article 3 of the Convention was not formulated as such "all children are equal among themselves". Such an article would then have been complementary; the development of art 2, probably would have better clarified the equality of these future citizens. The legislator did not want it as such; therefore, perhaps the principle of equality rose so naturally from the principle of non-discrimination that it did not appear necessary to formulate it in this manner?

This idea not to discriminate against the children amongst themselves does not mean automatic equality, which would say that any child is entitled to the same services: the economic reality of each area, each country, each continent imposes notorious differences and it is quite clear that each child will not receive the same as each one of his brothers on the planet. For example, in one same country, one can have great differences between children in rural areas and children in urban areas, where in particular there is a disparity for the access to education or care.

Being equal means that in identical circumstances we must be treated equally. On the other hand, the principle of equality is scoffed at when the differences are arbitrary or disproportionate. In fact, one can say that the inequality appears when a right is granted to one category of citizens and not another; or when a category of citizens is imposed particular rights that are not imposed on others.

Children are not yet citizens in the legal sense of the word, nevertheless chapter 1 of Article 2 imposes towards them an equalitarian treatment, and thus situations of inequality concerning them must not occur.

However, we must recognize that in this field a number of restrictions must still take place in relation to the complete and successful application of Article 2 Chapter 1: taking for example discrimination against girls, in particular the legal age for marriage or in traditional practices constituting veritable maltreatment. Lets also look at the discrimination linked to the birth of legitimate and illegitimate children, where numerous national legislations that still do not recognize the judicial equality of these children, for example access to a name and a heritage.

However the Convention anticipated an article 2 chapter 2 that imposes on the States to take all appropriate measures so that the child be effectively protected against all forms of discrimination. It is just to recognize the principle of non-discrimination, but I think that it is imperative to impose on the States the obligation to favour the application of this principle.

This in fact gives a much larger sense to the egalitarian idea and that imposes on adults the respect of this right. It is also certain that the fact of having recognized the child subject of rights, and to have given him the right to express himself are the different corollaries which
make it possible for the child to put forward, with needs before judicial and administrative
instances of their countries, this right to non-discrimination.

This article that institutes equality among children is fundamental. Indeed, it creates an
identical base between all the children of the world, who should be able to feel, if not all
provided with the same benefits, at least all likely to be treated in an identical way, in similar
circumstances, without having to be concerned with their colour, their birth or their religion. It
is an immense step ahead towards more equality, therefore more respect for one another, thus,
towards a more mutual comprehension.

4. The Universality of Child Rights

The CRC experienced global enthusiasm, (just after its proclamation by the United Nations
General Assembly on November 20th 1989, since the States precipitated to sign and ratify this
document, to the point where, at the beginning of the third millennium,) 193 States are Party to
this binding document. It’s Exceptional. This enthusiasm should be commended not only for
the momentum that it manifests toward the new concept of the child, subject of rights, but
mostly for the range that it confers on this legal tool. Indeed, we can say that children’s rights,
through the adhesion of almost all the States of the World, become a new legal reality
impossible to circumvent, marked by the revolutionary approach of the legal status of the child.

This new approach to the child constitutes an exceptional instrument of peace.

Its peaceful intent is displayed by the spirit and influence of the CRC on legal texts in the field
relating to the policy of assumption of child and family responsibility, as well as its binding
affect on the States Parties that must not only apply the CRC but must also create all the useful
conditions to favour its thorough penetration. Is it indeed possible to find another example of a
legal text, accepted by all and imposable to all, which conveys a similar spirit of universal
equality, of mutual respect and of promotion of individual rights for the benefit of family and
community?

Undoubtedly not even the Universal Declaration of Human Rights, a text that is however
highly symbolic, was ever accepted so universally, as well, it never caused such a deployed
energy to make it known, recognized and applied.

One would be quite naive to think that the simple fact that the Convention exists means that it
will be applied efficiently, spontaneously and without reserve.

Everyone knows the step, which separates words from actions. But one can say that in 20
years, there has been enormous progress and that all countries have consented to very
significant efforts to diffuse the rights of the child and to emphasize them.

There obviously remains titanic work to apply them in the reality of every day life, to create a
"rights of the child" reflex and to feed the culture, which must still underlie this movement.

IV. Conclusion

For a long time, the general policy with respect to children (but also family) consisted of an
action of protection either through the implementation of means intended to eliminate risks or,
of risky situations or, in an action of service, while placing at disposal the means aiming for precise, sometimes specific and at times long term, objectives.

The challenge that we are faced with, with the new position of the child, subject of rights and future citizen, is to pass from this wait-and-see policy (to meet needs) to a pro-active policy, which signifies to anticipate the needs and to set up the conditions for a harmonious development of children.

There is an enormous amount of work to be done: from the point of view of the concrete achievements to carry out, (surely); but especially from the point of view of mentalities to be changed, because it is a new state of mind that is necessary. It is not simple, indeed, to envisage and it is often easier to react when a problem occurs or when a need is felt.

Conclusion

Nevertheless, we think that the policy of tomorrow which would take into account the child, in his new statute, which is to say equal to all other children, guaranteed not to be discriminated against because he is white, yellow or black, legitimate or not, girl or boy, rich or poor, a national or emigrated, that this child which is entitled to be heard and can assert in front of official authorities, that policy is promising:

- Because it counts on a fundamental change: the point of view that one has of the child and the respect, which is owed him, not like a small person, but as a whole person;
- Because its aims are long term, in other words, the generations to come and not only the children from today, since its approach is durable;
- Because it is built on the universality of its principles and that it abolishes the borders: what is just in Kathmandu must also be in Geneva;
- Because finally it is based on the equality of all children, future citizens.

Will this policy lead to peace? No one can answer that question.

Hope resides in the conviction that many share: all the ingredients are present, not for a negative definition of peace like the absence of conflicts, but certainly for a positive definition of peace, the state of mind that is necessary to create mutual relations of comprehension between men.

Respecting others and their differences is a preliminary step to this state of mind; I believe that the CRC carries within itself the seeds for this culture. It is up to us to make those seeds grow.
THE WORK OF THE CRC COMMITTEE: STATE REPORTS AND CONCLUDING OBSERVATIONS
Dr. Hc Jean Zermatten, IDE Director

Plan for the presentation
1. The CRC Committee in the UN System
2. Monitoring
   – Pre-session (NGOs and UN agencies)
   – Session (dialogue)
   – Concluding observations
3. What about Nepal

The Convention on the Rights of the child
- Adopted and ratified by the U.N. General Assembly on November, 20, 1989 (20th anniversary)
- Entry into force on September 2, 1990
- Near Universal Ratification (193 State parties ratified)
- Optional Protocol on Children in Armed Conflict (2000): 127 ratifications
TREATY BODIES

COMMITTEES OF THE UN (or treaty bodies)
1. Human Rights Committee (HRC)
2. Committee on the Economic, Social, and Cultural Rights (CESCR)
3. Committee Against Torture (CAT)
4. Committee on the Elimination of Discrimination Against Women (CEDAW)
5. Committee on the Elimination of Racial Discrimination (CERD)
6. Committee on the Protection of the Rights of all Migrant Workers and the Members of their Family (CMW)
7. Committee on the Rights of the Child (CRC)
8. Committee of the Rights of Persons with disabilities (CRPD)
   • To come: Committee on Convention on Enforced Disappearances

Legal Framework and composition

• Art. 43 CRC (12 par. + 44 par. 5)
• One of the 8 Treaty bodies in the human rights field
• Part of the OHCHR for administrative matters, but independence and own rules of procedure
• Report to the UNGASS every two years through Ecosoc (art. 44 par 5)
• A body of 18 independent experts, with a four years mandate, serving in personal capacity
• Independence towards the State and the SP
• Geographical distribution and representation of the principal legal systems
Legal Framework and composition (2)

- The Committee meets in Geneva
- and normally holds three sessions per year consisting of a three-week plenary
- and a one-week pre-sessional working group (with UN agencies and NGOs)
- It acts in 1 (or 2) Chambers (2006 / 2009-2010)
- And review 9-11 (15-16) countries per session.
- Nepal: 21 septembre 2005

Main Activity: The Monitoring

- Main activity is to monitor how well States are meeting their obligations under the Convention
- To control if the CRC is implemented /or not in the State Parties
- Monitors as well the two optional protocols
  The basis is the initial report (2 years) and the periodical report (5 years) (art 44 CRC) and the Committee checks
  - the measures adopted to implement the CRC
  - the progress made on the enjoyment of those rights
- Reporting is an obligation, but some SP are very late: Nepal for its first and second report (ratification in 1990, first report in 95, and second in 2004...)
Working Methods

The mandatory steps
1. The SP report
2. The Pre-session
3. The list of issues
4. The written answers
5. The session
6. The concluding observations
7. The follow up

Working Methods (2)

The SP Report
1. How to write the report? Different possibilities
2. A role for NGOs (or coalition) and UNICEF and others?
3. What about children’s participation?
4. A unique chance to cooperate
5. The Guidelines for the initial report (1996) for the periodical report (2005, new) and for the OPAC (8.11.2007) and OPSC (3.11.2006)
**Working Methods (3)**

**Base: Report** (Art. 44, par. 1)
1. The report is the basis for the dialogue in the session
2. It gives a possibility of comparison between SP (common data)
3. Report has to mention fundamental data (legislation, organisation of the State, administration, coordination...)
4. ... factors and difficulties, if any, affecting the degree of fulfilment of the obligations...
5. ... with various informations on economy (budget allocations...) and statistics

**Working Methods (4)**

**The pre-session**  
behind closed doors, but very informal
1. Meeting with NGOs, essential step
2. Opportunity to meet with the national institutions for HR (Ombudsperson...)
3. Meeting with UN agencies, essential too
4. Papers distributed by the partners
5. Guidelines for the participation (98)
6. Follow up
**Working Methods (5)**

The list of issues: CRC art 44 par. 4
1. The statistical data
2. The questions of understanding
3. The special and specific questions
4. The list of themes to be discussed during the session

**Aim:** to give the opportunity to the SP to have a better preparation

---

**Working Methods (6)**

**ANSWERS**

1. Answer or non answer
2. Late answer
3. Incomplete answer
4. Answer in non-UN language
5. Some difficulties to understand the content...
Working Methods (7)

The Session = public meeting
1. The delegation (level and intersectorial)
2. Opening « ceremony »
3. The Rapporteur (reference person, coordination, making up)
4. The questions: 8 clusters (4 morning – 4 afternoon)
5. The answers / clusters
6. The closing « ceremony »

Working Methods (8)

The concluding Observations
1. The writing (positive / negative)
2. The form: concern and recommendations
3. The adoption’s process: closed doors
4. The last public meeting (end of the session)
5. The communication to the SP/ reactions
6. The availability (art 44 par. 6)
7. The media
Working Methods (9)

The Follow up
1. Communication to the SP
2. Communication to the UN agencies: UNICEF, UNHCR, UNESCO, WHO, ILO...
3. « Guidelines » for the national action
4. Inspiration for NGOs’ action(s)
5. Material for training, courses, seminars

Working Methods (10)

CONCLUSIONS
On the monitoring’s activity
1. A dialogue, rather than a judgement
2. Recommendations more than condemnation
3. Incentive to change through technical help or financial support
4. Interaction with the UN agencies and the World Bank
5. Proposal for different technical helps (UNICEF...)

Copyright: Jean Zermatten
NEPAL

- Ratification status:
  - CDE: R. 26 Jan 1990; EiF: 14 Sep 1990
  - Réserves, Déclarations: NO
  - OPAC: R. 8 Sep 2000; EiF: 3 Jan 2007
  - OPSC: R. 8 Sep 2000; EiF: 20 Jan 2006

- Reporting status:
  - OPAC: initial report due for 2009
  - OPSC: initial report due for 2008...

NEPAL

- First concluding observations: CRC/C/15/Add.57, 7 June 1996
- Second Concluding observations CRC/C/15/Add.261, 21 September 2005
- In regard with Cobs 1996, Nepal gives Insufficient follow-up, particularly to paragraphs: 25 (legislation), 26 (non-discrimination), 29 (data collection), 30 (resource allocation for children), 31 (birth registration), 32 (access to basic services), 33 (refugee children), 34 (abuse and neglect), 35 (street children), 36 (child labour), 37 (sale and trafficking), and 38 (juvenile justice)
And **new recommendations: GMI**

- establish a single inter-ministerial and intersectoral mechanism for the coordination,
- Prioritize budgetary allocations to ensure the implementation of the rights of children
- develop a system of data collection and indicators consistent with the Convention
- increase the efforts to ensure implementation of existing laws guaranteeing the right to non-discrimination
- Promote and facilitate respect for the views of children

---

**NEPAL**

**New Recommendations (2):**

- increase its efforts to ensure the registration of all children at birth
- prohibit corporal punishment/ill-treatment by law in the family, schools and other institutions
- take the necessary measures to prevent child abuse and neglect
- Expedite the process of establishing a comprehensive policy for children with disabilities
- Facilitate greater access to primary health-care services
- prevent early marriage
NEPAL

New Recommendations (3):

• eradicate all traditional practices harmful to the physical and psychological well-being of children
• Strengthen its strategy to combat poverty
• Make primary education compulsory and free for all children and for more years than just the five years
• Ensure that all internally displaced, refugee and asylum-seeking children and their families have access to health and education
• Implement the rights of children who have been affected by conflict
• address the increasing number of street children
• Enact appropriate legislation to ensure protection from sexual abuse and exploitation for boys and girls under 18 years
• to eradicate the practice of bonded labour by children...
INTRODUCING CHILDREN’S RIGHTS AT THE CONSTITUTIONAL LEVEL : THE EXAMPLE OF BRAZIL (PART I)

Mrs. Andressa Curry Messer, IDE scientific collaborator

Introduction

General View of Brazil

The official name

- The official name of the country is: Federative Republic of Brazil.
- Brazil is a federation of 26 states and one federal district which is its capital: Brasilia.
- Brazil is the fifth biggest country in the world after Russia, Canada, China and the United States; with a total area of more than 8 million kilometres.
- It shares a border with ten countries in South America and has lived in peace with all of them for almost 140 years.

Population

- With almost 190 million people, Brazil is the world's 5th most populous country after China, India, the United States and Indonesia.
- The Population is made up of many racial and ethnic groups. Almost 50% of the population are White, about 93 million; 42% are Pardo (brown), about 80 million; 7.4% are Black, about 13 million; 0.5% are Asian, about 1 million; and 0.4% are Amerindian, about 520,000.

Language

- Portuguese is the official language of Brazil. It’s spoken by almost all of the population and is the only language used in newspapers, radio, television, and for all business and administrative purposes.

Economy and social situation

Economy

- Brazil is the largest national economy in Latin America.
- According to the International Monetary Fund and the World Bank, Brazil has the 9th biggest economy in the world in terms of Gross Domestic Product (GDP) derived from purchasing power parity (PPP) calculations. For example, Brazil is the world's largest exporter of sugar, coffee, orange juice, soya, beef, tobacco and chicken.
- The country occupies an outstanding place in the world economy ranking, but it is still burdened with a cruel situation in terms of income concentration.
Social

- The wealthiest 10% of the population appropriate 50% of Brazil’s total family income.
- Social conditions can be harsh in the big cities as Rio de Janeiro or Sao Paulo, where a third of the population lives in favelas, or slums.
- The country has also huge regional disparities btw north and south.

1. Brief history of Brazilian Constitutions

Brazil had so far seven Constitutions: 1824, 1891, 1934, 1937, 1946, 1967 and 1988. The country has been nominally a constitutional republic ever since, but between from 1964 to 1985 Brazil experienced its longest military regime in history.

Constitution 1824

The first Constitution was written during the imperial period of Brazil. From the 16th to the 19th centuries, Brazil was a colony of Portugal.

Brazil Independence was proclaimed in 1822, by Pedro, Prince of Portugal, who became Pedro I, Emperor of Brazil.

One year later, in 1823, a Constituent Assembly started working. The Constituents wished for a liberal democracy; Pedro wanted to hold a Moderator Power, by which the Emperor would have power to veto any decision from the Legislative. Assigned by Pedro I, ten members of the Portuguese Party wrote the Constitution, which was completed in 1824.

There is no record, until the beginning of the twentieth century, the development of social policies designed by the Brazilian State.

The compulsory education was regulated in 1854. However, the law did not apply universally, as the slave had not guarantee this. Access was denied to those who also suffer from contagious diseases and those who were not vaccinated. With regard to regulation of labor, there was a decree in 1891 - Decree No. 1313 - which stipulated that in 12 years the minimum age to work. According to some authors, however, this determination did not apply in practice, because the infant industries and agriculture rely on the use of child labor.

Constitution 1891

The 1891 Constitution abolished the monarchy and followed the Proclamation of the Republic in Brazil, in 1889. The regime had changed, but the new Constitution was written by the same people who ruled the country during the Empire.

The principal features of this Constitution are: Senators were no long for life; the Federal
Chamber was created; Presidentialism system was established; direct vote, but only by men over 21; Catholicism was no longer the official religion of Brazil.

In the year 1927, was enacted the first legal document for the population younger than 18 years: the Code of Minors, which became popularly known as Code Mello Mattos. The Code for Minors was not addressed to all children, but only those considered as being "illegal".

**Constitution 1934**

In 1930, Getulio Vargas becomes President of Brazil. The oligarchy reacted against Vargas, in a bloody episode known as Revolution of 1930, and demanded a new Constitution. Vargas called elections for an Constituent Assembly, which promulgated a new Constitution in 1934. This Constitution was adapted to the transformations which happened in Brazil in the early 1900s.

The principal features are: voting became a duty for people over 18, including women; the Labour Justice and Electoral Justice were created.

**Constitution 1937**

In 1937, Vargas instituted the “New State” and imposed new Constitution. Inspired in the fascist movement, this Constitution, written by the Minister of Justice of the new regime (Francisco Campos), had an authoritarian trait.

The main feature was the concentration of Powers in the Executive. The President had powers to appoint the Governors of the provinces, who in turn appointed the mayors of cities. Vargas also created several agencies to be eyes and ears of the State.

In 1942 was established the Office for Assistance to Minor - SAM. It was an organ of the Ministry of Justice and worked as an equivalent of the prison system for the population under age. His guidance was correctional-enforcement.

Vargas was overthrown in 1945

**Constitution 1946**

Along with the new President, a Constitution Assembly was elected. The new constitution was presented in 1946.

Liberties guaranteed by the Constitution of 1934 and revoked by Vargas in 1937 were restored. This Constitution was particularly focused on individual freedom.

For the first time, guarantees take for granted today were inserted in a Brazilian Constitution, such as: all are equal before the law; freedom of expression; freedom of association; guarantees against illegal imprisonments.

In 1950, it installed the first office of UNICEF in Brazil. The first project carried out in Brazil aimed at initiatives to protect children's health and pregnancy in some states of northeastern Brazil.
The Office for Assistance to Minor - SAM will be considered, before the public, repressive, dehumanizing and known as "university of crime". The beginning of the 60s was marked, therefore, a better organized civil society.

**Constitution 1967**

In 1964, the militaries overtook the power. To avoid the opposition in the Parliament, the militaries used Institutional Acts to amend the Constitution (instead of being voted by the Parliament, such Acts were imposed by the government).

In 1967, as a means to aggregate all the Institutional Acts, the militaries called for a new constitution.

This Constitution was very authoritative. Some fundamental individual rights as the freedom of thought, freedom of work, freedom of meeting and freedom of association became relative; many were arrested for charges of "conspiration against the democratic order".

The period of military government was guided to the area of childhood, two significant documents and indicators of current vision:

• The law that created the National Foundation of the Welfare of Children (Law 4513 of 1/12/64) aiming to be a large institution for the care of children, whose line of action was in the hospital, both the poor and abandoned and the offenders, their primary focus.

• The Code of Minors of 79 (Law 6697 of 10/10/79) was a revision of the Code of Minors, 27, however it did not break, with its main line of arbitrariness, repression and assistance to people with children and youth.

**Constitution 1988**

Finally, we arrive to the seventh and current Constitution of Brazil.

In 1988 as part of Brazil's negotiated transition from authoritarianism to democracy, a Congress Constituent Assembly passed a new Constitution that came to be called "Citizen Constitution".

Promulgated with 246 articles-one of the longest in the world, it quotes the word "rights" much more frequently than the word "duties." Undoubtedly, it was a political milestone. It decentralized power and moved forward important social benefits similar to most advanced democratic countries.

The process of elaborating this Constitution, in the context of the re-democratization of the country, led to a full national debate, with the active participation of civil society. As a consequence, social questions and, specially, the rights of children and adolescents were given an unprecedented treatment in the present Constitution, compared with previous charters.

This Constitution offers the right to work, the right to a decent wage, the right to education, the right of vacation, the right to social security, the right to maternal and paternal leave, the rights of Indians to have land, etc.

Let’s see now how the child rights were introduced and are treated in this Constitution.
1. Making child rights constitutional

In Brazil, for decades, there had been pressure from NGOs and children's organizations for protecting children against poverty and hunger and despised by sections of the community. The most vulnerable children were those living or working on the streets. Often subjected to violence and repression from the police and armed groups, they and their advocates mounted the call for reform.

In 1985 was founded the National Street Children’s Movement, which held its first Congress in Brasilia, in 1986.

Brazil was in the process of drafting a new democratic Constitution. It was a golden opportunity for children to enshrine their rights in law. Even so, it was a daunting task.

UNICEF Brazil played an important role in strengthening and broadening the alliance of institutions working for children and provided technical support for the drafting process.

The campaign received a boost in 1986 when the Government established a National Committee on the Child and the Constitution. Along with representatives from government ministries, a wide variety of NGOs participated, including the National Street Children's Movement.

UNICEF worked with the Committee in a number of ways: providing a secretariat and technical assistance, recruiting private sector support and helping widen the network of groups and organizations involved.

This momentum led to a widespread public campaign including:

- mass gatherings of children in a number of cities
- more than a million signatures collected
- as well as demonstrations in front of the National Congress.

- Organizations and NGOs from around the country:
  - proposed drafts for two constitutional amendments which were endorsed by 200,000 voters and presented to the Constituent Assembly.

- These proposals ultimately became the chapter on the rights of children and adolescents in the Constitution - passed by a vote of 435 to 8.

2. Children’s rights in the Brazilian Constitution of 1988

- The article 227 of the Constitution is the main article addressed to children and adolescents. It guarantees their political, civil, social, economic and cultural rights, according to the principles of: (a) full protection; (b) absolute priority; (c) responsibility shared between the family, society and the State; and (d) children and adolescents as rights-bearers.
Let’s see what is laid down in the article 227:

“It is the duty of the family, society, and the State to guarantee children and adolescents, with absolute priority, the right to life, health, food, education, leisure, professional training, culture, dignity, respect, liberty and family and community life, besides maintaining them safe from any form of negligence, discrimination, exploitation, violence, cruelty and oppression.”

The article 227, paragraph 3, lays down the child’s rights to special protection, as e.g.

- social security and labour rights
- access of the adolescent worker to school
- full and formal acknowledgment of the charged offence
- equality in procedural relationships
- legal defence by a qualified professional
- Principles of brevity, exceptionality and respect when applying any liberty-depriving measure
- Juridical assistance
- Fiscal incentives and subsidies
- Prevention programmes and specialized care


- The success of the Constitution was followed by an even greater victory two years later, when the Statute of the Child and Adolescent was approved by both houses of the National Congress, legally obligating the Government to protect child rights.

- Following the promulgation of the 1988 Constitution, social movements, particularly those related to the rights of children and adolescents, became deeply involved in the elaboration of the bill that would be passed by the National Congress to become the Statute of the Child and Adolescent.

- The Statute replaced the repressive Code of minors.
- The children were involved in gaining its acceptance, with more than 5,000 meeting in Brasilia.

4 Children’s rights in the Statute of Child and the Adolescent (1990)

- The Statute of the Child and Adolescent defines a child as a person up to 12 years of age and an adolescent as being someone between 12 and 18 years of age (art. 2), dividing, therefore, the concept of child contained in the Convention into two stages of life and development.

- The Statute guarantees children and adolescents under Brazilian jurisdiction all the rights provided for in the Convention on the Rights of the Child and emphasizes the democratic principle of the participation and control of civil society in formulating and implementing policies and initiatives designed to promote and defend rights.
The volume 1 of the Statute defines the basic rights as, for instance:

- The right to life and health
- The right to liberty, respect and dignity
- The right to family and community life
- The right to education, culture, sports and leisure
- The right to professional training and employment protection
- The obligation to prevent the occurrence of any threat or violation of children’s and adolescents’ rights
- The responsibility of any individual or corporate entity

Volume 2 of the Statute establishes guidelines concerning:

- The Policy of Assistance
- The childcare organizations
- The protection measures for children and adolescents in a risk situation
- The practice of a juvenile justice
- The crimes against children and adolescents, by act or omission, as well as administrative infractions

Conclusion

The 1988 Brazilian Constitution and the Statute of the Child and Adolescent inaugurated are in perfect harmony with international protective parameters, particularly with the Convention on the Rights of the Child. They inaugurated a new paradigm inspired by the conception of the child and adolescent as true rights-bearers, in a special stage of development.

There is still a long road to be traveled before it reaches a state of full guarantee of rights with solid institutions and mechanisms working. However, we can say with ease that important advances have occurred in recent years, and this is worth even more significant is the context of the Brazilian history itself, a story crossed by more authoritarian than the strengthening of democratic institutions. In this sense, the struggle for children’s human’s rights in Brazil is still an ongoing battle, worthy of perseverance and obstinacy of those who believe that a better world for all is possible.
1. **Convention on the Rights of the Child**

In 1959, The Declaration on the Rights of the Child was adopted by the General Assembly of the United Nations (UN). This Declaration can be considered as the basis of the children’s rights. In fact, 30 years later (November 20, 1989), the UN Convention on the Rights of the Child (CRC) was adopted by the General Assembly of the UN. After ten years of intense reflections (1979-1989) a new status of the Child was born.

From the Declaration to the Convention, it evolved from an international declarative based document to a binding document that holds the countries that sign and ratify it, accountable.

The treaty was open to signature and ratification in January (26,) 1990 and entered into force on September of the same year (2, 1990). In less than 10 years, the CRC has been signed and ratified by almost all the nations of the globe (193 of 195), to the point where we can say that it has become a universal instrument, a reference in the Rights of the Child for the entire world.

Nepal was one of the first States that ratify the CRC, on September 1990.

**The two additional Protocols**

When the Convention was written, it tried to be exhaustive. But it could not foresee everything. And since its entrance into force two issues captured the attention of the States Parties:

- **recruitment of children in armed conflict.** In fact, CRC sets the age limit for involvement in armed conflict to 15 years (art.38, 3) letting children between 15 and 18 years without protection in a situation of the most dangerous.

- **sexual exploitation of children.** It means the explosion of pornographic internet sites implicating children, as well as sex tourism, sale of children, illegal adoption and the organ trafficking.

Thus, two optional protocols were adopted and opened to signature and ratification by the States. Both protocols were signed by Nepal, on January 2007 for the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC) and January 2006 for Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC).

2. **Principles of CRC**

In order to present you the essence of the Convention and due to the short time of the presentation, I will present you two of the principles of the CRC:
a) Non-Discrimination

Just after the definition of the child, the Convention wrote as its first principle the idea that all rights must be granted to all children without exception. Indeed, art.2 ch. 1 foresees:

“States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex. Language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status”

This article, that institutes equality among children, is fundamental. Indeed, it creates an identical base between all the children of the world, who should be able to feel, if not all provided with the same benefits, at least all likely to be treated in an identical way in similar circumstances, without having to be concerned with their colour, their birth, their gender or their religion. It is an immense step ahead towards more equality, therefore more respect for one another, thus, towards a more mutual comprehension.

b) Participation

CRC, in its article 12, foresees that the child who is capable of understanding has the right to freely express his/her opinion regarding all questions that concern him/her and that this opinion must be taken into account with the necessary nuances due to his/her age and his/her degree of maturity.

The fact of allowing the child to speak does not mean giving him/her reason in all cases, but means allowing him/her to associate himself/herself with the debate.

Allowing to express the child’s opinion means also to listen to this opinion and listening is also allowing children to listen to one another: if the child is entitled to speak, then all children are entitled to speak and all children must also listen to what their friends have to say.

It is in no case subversion; it is a very natural evolution, which leads us towards this state of mind, which should govern the relationship between individuals. Towards respect and mutual comprehension.

3. CRC in the Constitution

CRC and the Optional Protocols are binding documents for the Member States. They create States’ obligations. Nepal, as the other, is obliged to apply the norms contained in those international instruments.

The best way to accomplish the will that the State party expressed ratifying the treaties (It means to see children’s rights applied and therefore improve the situation of children), is to include the norms of the international documents on the higher national legal document: The National Constitution.

An Example: the Swiss Constitution
The Swiss legislator decided, in order to strengthen their application, to inscribe children’s rights into its new Constitution entered into force in January 2000.

Then, Switzerland introduced article 11 which says:

“Article 11 Protection of Children and Adolescents
(1) Children and adolescents have the right to special protection of the personal integrity and to promotion of their development.
(2) They exercise their rights according to their capacity to discern.”

Since then, this article has to be translated in all the laws of the country. This is a long process that in Switzerland has not terminated yet, but changes have already started.

Thank to that constitutional article:

- In 2006, a Swiss legal juvenile justice code was created, separated from the Swiss penal code for adults introducing the CRC’s norms for juvenile justice in the national Courts.
- Also, children, as young as 7 years old, are now entitled to express their opinion in front of tribunals in case of decisions affecting them directly, as the divorce of their parents.
- And since 2007, according to their understanding, minors can lodge a complaint.

Unfortunately, there is still work to be done. For example, the situation of migrant children is not in accordance with the norms of the CRC. Full participation of children to school or public life according to art. 12 CRC still needs to be improved. And there is no ombudsperson, children’s defender or minister for children.

**Conclusion**

In conclusion, to introduce the international norms about children’s rights into the National Constitution strengthen and facilitate their application. Therefore, it improves children situation in their daily life.
Introduction

1. From Dictatorship to democracy

Brazil had so far seven Constitutions. The current Brazilian Constitution was promulgated in 1988.

From 1964 to 1985, the country was ruled by a Military government, which restrained many individual rights in the name of democracy.

In 1984, when it became clear that the Military would leave the government, Brazilian population engaged in a massive campaign, trying to change the old Constitution so that the new civilian President should be elected directly by voting; this campaign became known as "Diretas Já" (Direct Now).

Despite the popular movement, the old system was maintained, and the new President, Tancredo Neves, was elected by the votes of the Representatives in the Parliament.

In 1979, an Amnesty Law was passed. Many politicians who had been persecuted (or exiled) regained their political rights (or returned to Brazil) and were elected to the Constituent Assembly. Many of them courageously voiced their opposition during the dictatorship.

These facts led the Constitution to be very liberal, politically speaking. A chapter was dedicated to "Individual and Collective Rights and Duties";

Article 5, for instance, which lists individual rights, comes with 78 clauses; moreover, another article states that this article 5 can not be changed, even by another Constitutional Amendment. This was a reaction against the former Constitution of 1967, by which the Militaries reduced the expressed individual rights, and made some of them relative values.

In theory, the Constitution of 1988 became the "Constitution-Citizen". The idea seemed to be "the State mistreated their citizens in the recent past; now, it is time to repair their damages".

Promulgated with 246 articles-one of the longest in the world, it quotes the word "rights" much more frequently than the word "duties." Undoubtedly, it was a political milestone. It decentralized power and moved forward important social benefits similar to most advanced democratic countries.

The process of elaborating this Constitution, in the context of the re-democratization of the country, led to a full national debate, with the active participation of civil society. As a consequence, social questions and, specially, the rights of children and adolescents were given an unprecedented treatment in the present Constitution, compared with previous charters.

2. Making child rights constitutional

In Brazil, for decades, there had been pressure from NGOs and children's organizations for protecting children against poverty and hunger and despised by sections of the community.
The most vulnerable children were those living or working on the streets. Often subjected to violence and repression from the police and armed groups, they and their advocates mounted the call for reform.

In 1985 the National Street Children's Movement was founded, which held its first Congress in Brasilia, in 1986.

Brazil was in the process of drafting a new democratic Constitution. It was a golden opportunity for children to enshrine their rights in law. Even so, it was a daunting task.

UNICEF Brazil played an important role in strengthening and broadening the alliance of institutions working for children and provided technical support for the drafting process.

The campaign received a boost in 1986 when the Government established a National Committee on the Child and the Constitution. Along with representatives from government ministries, a wide variety of NGOs participated, including the National Street Children's Movement.

UNICEF worked with the Committee in a number of ways: providing a secretariat and technical assistance, recruiting private sector support and helping widen the network of groups and organizations involved.

This momentum led to a widespread public campaign including:
- mass gatherings of children in a number of cities
- more than a million signatures collected
- as well as demonstrations in front of the National Congress.

Organizations and NGOs from around the country:
- proposed drafts for two constitutional amendments which were endorsed by 200,000 voters and presented to the Constituent Assembly.

These proposals ultimately became the chapter on the rights of children and adolescents in the Constitution - passed by a vote of 435 to 8.

The 1988 Constitution of Brazil includes human rights principles and gives absolute priority to children’s rights in article 227. This inclusion represents a significant advance in the recognition of children as persons with rights.

Let’s see what is laid down in the article 227:

“It is the duty of the family, society, and the State to guarantee children and adolescents, with absolute priority, the right to life, health, food, education, leisure, professional training, culture, dignity, respect, liberty and family and community life, besides maintaining them safe from any form of negligence, discrimination, exploitation, violence, cruelty and oppression.”

This article and its paragraphs guarantee the political, civil, social, economic and cultural rights for children, according to the principles of: (a) full protection; (b) absolute priority; (c)
responsibility shared between the family, society and the State; and (d) children and adolescents as rights-bearers.

Following the promulgation of the 1988 Constitution, social movements, particularly those related to the rights of children and adolescents, became deeply involved in the elaboration of the bill that would be passed by the National Congress to become the Statute of the Child and Adolescent.

These two legal instruments are in perfect harmony with international protective parameters, particularly with the Convention on the Rights of the Child. They inaugurated a new paradigm inspired by the conception of the child and adolescent as true rights-bearers, in a special stage of development.

3. The role of the media

During the military government in Brazil, the press - whether radio, TV or newspapers - was censored. Despite censorship, the journalists played an important role during the process from the dictatorship to the political openness.

The press acted as mediator between groups representing civil society and the military in defence of democratization. In working like that, the press gained credibility and legitimacy with the public and got an important status as both an area of debate and agent of the political process.

With the end of military rule, the Brazilian press redefined its role in the society and in the process of democratization of the country. Some media professionals have played a vital role to play in social mobilisation around the rights of children. They have been conscious of their responsibilities and keen to develop approaches that will improve their ability to better inform the society about children’s rights.

In 1992, for instance, (three years after the promulgation of the current Constitution) a group of journalists founded an NGO called ANDI – the “News Agency for Children's Rights”, to support the media in its coverage of issues related to children and adolescents rights.

These journalists started an innovative work with the media, offering suggestions for new guidelines, encouraging the media to denounce children’s rights violations or praising social projects.

The Agency’s mission is to create a culture in which the press prioritizes children and adolescents as a strategic issue, both for the development of the country and also to take the press to the heart of social issues.

With this in mind ANDI encourages the idea that the media must publish stories about projects which can promote the changes that have to be made. The paradigm ANDI has been trying to build with the Brazilian press is that by publishing problems and solutions they will draw attention to the lack of political action.

ANDI’s strategies are:
➢ Work to respond daily to the needs of journalists, communication students, researchers and information sources (governmental and non-governmental organisations, social leaders and Third Sector partners)

➢ Develop methodologies for research, analysis and interaction with the media.

➢ Host seminars and workshops that bring together communicators and information sources to prepare the press to cover themes related to childhood and adolescence.

➢ Contribute to the training of socially responsible journalists.

➢ Reproduce methodologies for mobilisation and qualification of the media, on both national and international levels.

Media Analysis - ANDI monitors and analyses major Brazilian newspapers and magazines to provide journalists with background for their reports on issues concerning children and adolescents, as well as to make participants in the Third Sector more aware of the strategic importance of the media in confronting the social challenges currently affecting Brazil.

The themes analysed include:
➢ Childhood education (0 to 6 years)
➢ Sexual abuse & exploitation of children & adolescents
➢ Violence with the child or adolescent as a victim or agent
➢ Teenage tobacco or alcohol consumption
➢ Children's health
➢ Adolescents' health

ANDI awards annually, a price of about seven thousand dollars to those who contribute to quality information on children's rights

ANDI periodically holds meetings to allow journalists and others to discuss ways to broaden/enrich coverage of a particular theme. Discussions revolve around study results and development of proposals for the implementation of a more consistent editorial approach.

Conclusion

➢ The democratic process in Brazil did not end with the promulgation of the Constitution. This was just the first step. This process is still under construction and its mission will be fulfilled when the rights guaranteed in the constitution will be respected.

➢ The media have a great power over public opinion. The information spread by the media across the whole of society influence people's behaviour and change their mentalities.

➢ The media is a tool for civic participation of people, adults and children, in the process of constitution building and therefore fundamental to democracy.
THE COMMITTEE ON THE RIGHTS OF THE CHILD: REPORTING PROCESS AND MEDIA CONTRIBUTIONS AND THEIR ROLE

Dr. Hc Jean Zermatten, IDE Director

Interesting for the media, the child?

- the media give an "image" of the child; they reflect and influence perceptions about who children are and how they behave.
- This image could create and convey respect for young people;
- however, it could also spread prejudices and stereotypes which may have a negative influence on public opinion and politicians
- Nuanced and well-informed reporting is to the benefit of the rights of the child

Media, CRC and the CRC Committee


- The media have essential functions in promoting and protecting the fundamental rights of the child
- The media could also play a pivotal role in monitoring the actual implementation of the rights of the child
- The integrity of the child should be protected in reporting about involvement in criminal activities, sexual abuse, family problems...
- the influence on children of negative aspects of the media, primarily programmes containing brutal violence and pornography...
MEDIA and Child participation

- One of the principles of the Convention is that the views of children be heard and given due respect (art. 12).
- The media is important for offering children the possibility of expressing themselves.
- This is also reflected in articles about freedom of expression, thought, conscience and religion (arts. 13-14).
- It is in the spirit of these provisions that children should not only be able to consume information material but also to participate themselves in the media.
- This requires that there exist media which communicate with children.
- To develop child-oriented media: special pages... for children.

Media and respect of children

- media professionals, including media editors and owners, should be particularly vigilant in trying to safeguard the integrity of the child.
- need to use special techniques taking into account the best interests of the child in interviews or simulations involving child victims of violence and abuse.
- child's access to the media: number of positive experiences, news agencies where child reporters provided information aimed at children.
- misrepresentation of children from specific groups!
MEDIAS, RULES, CASE AND CHILDREN’S RIGHTS
Mrs. Paola Riva Gapany, IDE Deputy Director

General Regulations and Ethics

- Media professional associations, national federations
- the International Federation of Journalists (IFJ)
- UNICEF (Ethical guidelines, Principles for ethical reporting on children)
- NGOs (MediaWise)
- Organisations (Organization for Security and Co-operation in Europe).

The Recife Declaration

- the journalistic language way of communication to the public
  - respect of child’s personality
  - respect of freedom of information
Switzerland: a child having a child

- how is it medically possible for a 10 years child to have a baby?
- why no one in school noticed that she was pregnant?
- social exclusion
Enjeux
A 10 ans, elle devient mère.
Le Valais est sous le choc

MÈRE À 10 ANS!

Cet accouchement est à la limite du possible.
sans réponses
demandent un suivi. Certaines sont qu'un cas d'une telle

«Mon fils de 9 ans a été trouble»

Des tas de questions

Estre en gratification

Copyright : org
Une Camerounaise de dix ans accouche: le Valais s’interroge

Les parents d’une jeune Camerounaise, âgée de dix ans, ont été interrogés par les journalistes suisses sur l’incidence de cet événement dans la société camerounaise. 

Le chef de la police de la région vaudoise, M. Lambez, a déclaré avoir rencontré des difficultés à trouver des informations précises sur le cas. Il a souligné que le mariage précoce est un problème courant dans la région et que les autorités se sont bien débrouillées pour prendre des mesures pour faire face à ce défi.

La mère de la jeune fille, Mme Mba, a affirmé qu’elle a assisté à la naissance de sa fille depuis que la petite avait cinq ans. Elle a expliqué qu’elle a été informée de cet événement par l’État camerounais qui a pris des mesures pour assurer l’assistance médicale nécessaire.

Un gérant de fortune à l’heure des comptes

Le gérant de fortune, M. Bégnin, a révélé que le processus de transition a été difficile et qu’il a dû faire face à de nombreux défis. Il a souligné que la situation est plus complexe qu’il n’y paraît et que les difficultés pourraient persister dans les mois à venir.

Le gérant de fortune a aussi déclaré qu’il a fait face à des difficultés pour obtenir des informations sur la situation, car l’état des comptes de l’entreprise est très dégradé. Il a expliqué que le processus de transition a été affecté par la situation financière de l’entreprise, qui a dû faire face à de nombreux défis pour assurer l’assistance aux clients.

Le gérant de fortune a également souligné que le processus de transition a été affecté par la situation géopolitique, qui a dû faire face à des difficultés pour assurer l’assistance aux clients.
Die jüngste Mutter (10) der Schweiz
Was wirklich geschah
Wer ist der Vater?
Was sie verschweigt

Die kleinen M. (40)
schwanger werden, bis

Wieso hat man erst so spät gemerkt, dass das Kind schwanger war?
L’enquête

L’enfant qui mit au

le cher

Une fillette d’une dizaine d’années qui accoucha. L’enfant est un beau
l’éléphant et le tigre. Abusée par un homme de 66 ans, elle a aussi
avoué une relation avec un adolescenc, qui pourrait être le père.

C

Le 23 mai, Jacques-Henri a
l’entraînement de sa fille de 10 ans est peut-être inquiète.
Conclusion......

BEST INTEREST OF THE CHILD
GENERAL INTRODUCTION TO THE CONVENTION ON THE RIGHTS OF THE CHILD (PART II)
THE COMMITTEE ON THE RIGHTS OF THE CHILD: THE NGO’S CONTRIBUTIONS

Dr. Hc Jean Zermatten, IDE Director

NGOs

- Based on the written information submitted, the Committee will issue a written invitation to selected NGOs to participate in the pre-session which provides a unique opportunity for dialogue.
- The pre-session is a meeting closed to the public, so no observers are allowed.
- See "Guidelines for the participation of partners (NGOs and individual experts) in the pre-sessional working group of the Committee on the Rights of the Child." (CRC/C/90, Annex VIII).
- Interesting: to advise the Committee on the specific questions to discuss with the SP.

Working Methods (5)

The list of issues: CRC art 44 par. 4 is based on the pre-session

1. The statistical data
2. The questions of understanding
3. The special and specific questions
4. The list of themes to be discussed during the session

Aim: to give the opportunity to the SP to have a better preparation

ANSWERS !!!!
Working Methods (6)

The Session = public meeting
1. The delegation (level and intersectorial)
2. Opening « ceremony »
3. The Rapporteur (reference person, coordination, making up)
4. The questions: 8 clusters (4 morning – 4 afternoon)
5. The answers / clusters
6. The closing « ceremony »
The NGO’s ??? (place and role)

Working Methods (7)

The concluding Observations
1. The writing (positive / negative)
2. The form: concern and recommendations
3. The adoption’s process: closed doors
4. The last public meeting (end of the session). Presence of NGOs
5. The communication to the SP/ reactions
6. The availability (art 44 par. 6)
7. The media
Working Methods (8)

The Follow up
1. Communication to the SP
2. Communication to the UN agencies: UNICEF, UNHCR, UNESCO, WHO, ILO...
3. « Guidelines » for the national action
4. Inspiration for NGOs’ action(s)
5. Material for training, courses, seminars

Follow up: NGOs
• Importance to base the action on the Cobs
• Importance to monitor the SP
• Necessity to keep in touch with the partners
• Possibility to contact the CRC Committee, or members
• Action in training, specialisation, group discussion
• Involvement of the children
THE NEPALESE SYSTEM OF CHILDREN’S RIGHTS AND THEIR IMPLEMENTATION

Mr. Deepak Raj Sapkota

Ratification and reporting

- Ratified in 1990
  - Initial report 1995
  - First & Second combined periodic report 2004
  - Third report due to 2010
- Optional Protocols
  - Ratified in 2006 & 2007
  - Initial report due to 2008 & 2009

Policy & legal provisions

- Direct Influence of CRC
  - Children’s Act-1992
  - Regulation of Children’s Act-1995
  - Juvenile Justice Procedure regulation-2006
  - 3 years Interim Plan
  - Ratification of Optional Protocols to CRC
  - State Party Report submission to CRC Committee
  - Ratification of SAARC regional Conventions regarding Child Welfare and trafficking of children
Policy & legal provisions cont..

- Progress after CRC
  - Child Labor Act 1999 & its Regulation
  - Child Labor Master Plan (10 years)
  - Education for All-Action Plan
  - Health Sector Reform Plan
  - Separate Provisions in Interim Constitution concerning CR (Fundamental rights)

Structure

- MoWCSW: with ‘Children’ in its name
- MoWCSW: has ‘Child Development Section’ in its organizational structure
- MoH: Child Health Division
- MoE: Education Department
- MoLTM: Child Labor Section
- CCWB as focal agency at central level and DCWBs in all 75 district
  - NCCR
Nepal Police: Women and Children Service Center-37 districts
Supreme Court: JJ Strengthening Committee and 26 Juvenile Benches
NHRC: Child Desk
Specific services and facilities

Structure- non government sector

Grow of child focused NGOs & Networks (CZOP, Consortium etc)
Child Clubs & networks (over 9,000 as per CCWB data)
Child Protection mechanisms at Community levels
  Protection committees & initiatives
More international cooperation
  INGOs
  UNICEF
  And others
Some critical issues

- Progressive rights vs. basic rights
  - Education vs. quality Education
  - Health vs. Quality Health
  - Protection
    - Against discrimination, child labor, children in institutional care, children in conflict with the law
  - Name, Nationality and Identity
  - Peaceful environment to grow (national, school, home)

Some critical issues

- National commitment
- Mainstreaming
- Acceptance and recognition
- Resource Allocation & Investment
Conclusion

Let's Commit

when we meet after five years we will be dealing with more quality, child development and growth; More opportunity and reaching to un-reached; Access and non implementation will be no more issue for all of us.
NON-DISCRIMINATION PRINCIPLE
Dr. Hc Jean Zermatten, IDE Director

Plan of the presentation

- The CRC and the four principles
- The right of not to be discriminated
  - definition
  - function
  - 4 elements of the definition
- The obligations of the State Parties
- The other duty bearers
- Conclusion

The mechanisms of the CRC

- Art. 2: Non-discrimination
- Art. 3: Best interests of the child
- Art. 6: The right to life, survival and development
- Art. 12: The right to be heard
  These articles are necessary to implement every individual right
  They are principles and substantive rights.
The specific situation of the child

- The child is discriminated for being a child: he/she has not the same rights as the adults.
- It’s partly normal, because of his/her vulnerability and immaturity (political rights stricto sensu)
- And partly not defensible, if we think about personal rights, i.e. rights attached to the person (civil rights as the right to a name, to an identity, to a nationality,) or the right to be protected against different forms of exploitation...

The reality

- Children are discriminated against all the time
- Little girls are not treated like little boys
- Disabled children are not treated like non-disabled ones,
- Rural children don’t get the same opportunities as those living in the cities,
- Migrant children don’t benefit the same rights as national...
- Children are more vulnerable than adults to discrimination
Non-discrimination in int. law

- UNDHR 1948: art. 2: the right to be free from discrimination in the enjoyment of HR
- CCPR, 1966, in force 1976: art 2 (1)
- CESC, 1996, in force 1976: art. 2 (2)
- CERD, 1965: art. 1, 2, 3
- CEDAW, 1979, art. 1 and 2
- CAT, 1984: art. 1
- CRC, 1989: art. 2
- CRPD, 2008: art 5, Equality + non-discrimination

Notion

Equality or / and non-discrimination?

- If one refers to equality, it’s to capture the positive dimension of equality, with all measures of promotion of equality in practice,
- whereas if we refer to non-discrimination, we are used to refer to the negative absence of discrimination,
- For the HR Committee, equality and non-discrimination “constitute a basic and general principle relating to the protection of human rights”
**Notion (2)**

Art. 1 of CERD (*Elimination of All Forms of Racial Discrimination*) provides that the term “racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

---

**Notion (3)**

Similarly, art 1 of the CEDAW (*Elimination of All Forms of Discrimination against Women*) provides that “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.
The principle of non discrimination (which is at the origin of the right of not being discriminated) prohibits any distinction, exclusion or restriction or preference made on the basis of a criterion mentioned in a legal instrument, which has the effect or purpose of impairing or nullifying the recognition, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

The CRC

• Article 2
1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
More concretely

Art. 2 forbids the State parties to:
1) Treat the right-holder differently on the basis of race, sex, ... or any other named grounds
2) When doing so impair the right-holder’s (in this case the child) enjoyment of:
3) Another right of the CRC (i.e. of one of the substantive rights)

Function of the non-discrimination

- Protection of the human dignity, here of the dignity of the child as a person
- Strengthening of all the substantive rights: SP can make different judgements in implementing the rights, but he cannot use race, sex and other named criterions as means for accomplishing political goals
- Affirmation that the criterions of discrimination are offences to human dignity
Elements of the definition

a) to treat differently similar situations or to give similar treatment to different situations.

The distinction between the situations has to be evaluated in concreto, taking into account the local, regional or national context. The discrimination is realized when a voluntary violation of the equality, without justification exists.

Ex. to discriminate someone because he is too short, or too old...

Elements of the definition (2)

b) Absence of legitimate ends

Not all differences in treatment are discriminatory; only those which lack an objective justification.

An objective justification is one which is not unjust, arbitrary, capricious, despotic or in conflict with the human dignity...

Example: no to give an allocation to a family because the colour of its skin: the purpose of discrimination is not legitimate.
c) Lack of proportionnality of means to ends
There must be a reasonable relationship of proportionality between the means employed and the ends sought.
Example: If the goal is to limitate the right of a person to get child benefit, the method can’t be based on administrative obstacles, impossible to overcome for the potential beneficiaries.

d) Suspect classifications
Some grounds of discrimination can be suspect, these are not so clear as sex, religion, birth or nationality... but are based on hidden causes
Example: not to engage an employee because he/she is ugly, or too fat, or he/she suffered a depression...
Other CRC articles on this issue

- Art 22 (refugees children),
- Art. 23 (disabled children),
- Art. 30 (indigenous children).
- Novelty as the two specific criterions in the CRC: disability and ethnic origin
- And art 2 forbids adverse distinction on the grounds of the situation of the parents and their impact on the children

Obligations of the State Parties

- The State Parties are the duty-holders to ensure the right of the child (right-holder) not to be discriminated since they are the only parties to the CRC
- The SP have to ensure the formal equality of treatment and the material equality. Often apparently there exists equality (de iure) but not in the facts (de facto).
- Ex. the salaries between men and women, the right to education for boys and girls...
Obligations of the State Parties (2)

A) Negative duties
Abstention of discrimination, prohibition by laws; sanction to the offenders (public or private...)

B) Positive duties
adoption of laws, authorities’ interventions to protect the children from vulnerable groups, actions to promote the equality, monitoring the implementation of the measures, raising awareness campaigns, prevention...

Other duty-bearers

- The parents or the guardians: they are an important source of discrimination as they dispose of important power on the children
- Other individuals: medias, role of religious groups or certain political parties, different lobbies...
- The children themselves also often at the origin of discrimination against other children
CONCLUSION

- The right of non-discrimination is a challenge for all of us
- We have to take international human rights (in particular the CRC) seriously
- And to consider the children as rights holders
- To set aside preconceptions and
- To reaxime the effectiveness of the implementation of this principle and of the right of all children not to be discriminated!
FACTS & CASES

- Tradition/religion and culture
  - Poverty
  - Violence

TRADITION, RELIGION, CULTURE

- Female genital mutilation
- honour crime or honour killing
- virginity testing
- dowry and bride price
- early marriage/early motherhood
- female infanticide, selective abortion
POVERTY

- Education
- Sexual exploitation
- Access to medicine
- HIV/AIDS

VIOLENCE

- Violence at school
- Domestic violence
- War
Some explanations about women’s and girls’ discrimination

1) Biological factors
   - **man**: soldier, hunter, chief = strength, power, bread winner
   - **woman**: mother and responsible for home = weak, less power, not the bread winner

2) Tradition, religion, culture
   Main religious characters are male; female figure is present as spouse, mother, or princess

---

Short overview on women’s rights movement

- equal rights movement
- different rights movement
- contextual rights movement
Equal Rights Movement

- Appears in the 1850 in the USA with the right to vote (suffragist movement)
- In the 1970, difference between men and women is cultural only
- Motherhood is not an issue
- The image of the equal rights woman is the one of an hero
- Currently, the equal rights movement is becoming feminism radicalist extremist (ERA)

Different Rights Movement

- Appears in the 1980/1990 in reaction of the equal rights movement
- Based on the biological difference between men and women
- Motherhood is one of the most important issue
- The image of the different rights woman is the one of the victim of man
**Contextual Rights Movement**

- Appears in the late 1990/2000
- Notion of equality is based on the context
- Motherhood is a part of the context and could become an issue
- This approach takes into consideration the recent progress in medicine and psychology

---

**Women's rights and Children's rights**

**an institutional approach**

- **UN System** (CRC + CEDAW + Committees)
- **Division for the Advancement of Women** (DAW),
- **Commission on the Status of Women** (CSW),
- **OSAGI** (Office of the Special Adviser on Gender Issues and Advancement of Women)
- **UNIFEM** (United Nations Development Fund for Women)
- **INSTRAW** (International Research and Training Institute for the Advancement of Women)
- **IANWGE** (Inter Agency Network on Women and Gender Equality)
- **UN Secretariat**, **UN intergovernmental bodies**, **UNICEF**...
- **Special rapporteurs**
Women’s rights and Children’s rights

an institutional approach

- NGOs Committees
- NGO Committee on the status of women
- NGO Group for the CRC
- World Conferences on Women
  - 1975 Mexico
  - 1980 Copenhagen
  - 1985 Nairobi
  - 1995 Beijing

Women’s rights and Children’s rights

a legal approach

- The CRC
  - Art. 2 deals with discrimination in general and not only gender discrimination
  - The girl child shall enjoy all the fundamental rights, including the right to make free and informed choices
  - Girls are simply human beings who should be seen as individuals not as daughters, wives, mothers, ...
  - The committee focus on boys and girls integration
  - While analysing the State reports, the committee asks questions about girls situation and not only as far education is concerned; (age of majority, gender stereotype, harmful traditions, war, HIV/AIDS)
  - CRC + CEDAW have a mutually reinforcing nature and are complementary
Women’s rights and Children’s rights
a legal approach

- CEDAW
  - art. 2 CEDAW aims to pursue a policy of eliminating
discrimination against women, you could interpret women as
including girls
  - language of the CEDAW: women, men, children, and girls
  - girls are only mentioned at art. 10 CEDAW f (education), but
only when school dropouts is concerned: *reduction of female
students drop-out rates and the organisation of programmes
for girls and women who have left school prematurely*
  - age of marriage: nothing about girls (art.16 CEDAW)
  - CEDAW Committee doesn’t question about girls during State
report exam; sometimes they do ask for girls’ education and
harmful practices and traditions

Including men and boys

- Gender is not a woman’s issue
  anymore
- Gender is a fundamental principle
  based on equality, which is a respectful
  relationship between people
- The role of men and boys in changing
  and challenging unequal power
  relations is crucial
OPTIONAL PROTOCOL ON CHILDREN INVOLVED IN ARMED CONFLICTS

Mrs. Clara Balestra, IDE scientific collaborator

1. CRC and its success

An international Protocol, a Convention or a Treaty is the consensual result of the negotiations between representatives of the States involved. This point is particularly relevant in the case of OPAC, as we will see.

In the specific field of the protection of children in armed conflict, the major goal achieved by the Convention on the Rights of the Child (CRC) is its whole application during armed conflict. In fact, CRC has to be applied fully even during wartime and all the CRC’s rights have the same value.

Another achievement is that the CRC does not make differences between the protection given to children in an international armed conflict or an internal armed conflict. In fact, States are normally reluctant to let an international law regulate their internal conflicts and the major treaties ruling war make this distinction.

A part from that, in this matter, we have to admit that it has brought nothing new in the legal protection of children. It was in fact criticised for two main reasons:

- First, CRC sets the age limit for involvement in armed conflict to 15 years (art. 38 al. 3) letting children between 15 and 18 years without protection in one of the most dangerous situations.

- Secondly, the art. 38 (the article relevant for children in armed conflict) takes the same formulation than Additional Protocol I of Geneva Conventions (Add. Prot. I) – “children who have not attained the age of 15 years do not take a direct part in hostilities” (art.77) - bringing nothing new to the legal protection of children. Even more, it jeopardizes the better protection included in the Additional Protocol II of Geneva Conventions (Add. Prot. II) for protection in internal conflicts about participation in combat – “children who have not attained the age of 15 years must (...) nor take part in hostilities” (art.4).

However! CRC had an unexpected success. All the States but Somalia and USA ratified it. In front of this success and thanks to the historical momentum (26th Congress of Red Cross and Red Crescent, ILO Convention N§ 182 on the child labour, ...), the promoters of Children’s Rights tried to improve the legal protection of children in armed conflict and the result is the Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict (OPAC).

Having worked in the field during several years, I would like to say a word before starting: in my presentation the word protection is meant as legal protection. It is about legal norms that

---

6 "The term 'hostilities' was defined during the Diplomatic Conference of 1974-1977 as ‘acts of war that by their nature or purpose strike at the personnel and materiel of enemy armed forces’" (ICRC)
are ruling war and the protection they give to children in this situation. I insist in saying legal, because unfortunately those norms, stipulated by States, often are not applied in the field, making their protection weaker. We have more and more legal tools to combat the impunity of violations to the law of war, as International Criminal Court (ICC). But the day-by-day reality of armed conflicts is still far away from a universal respect of those legal norms. Thank you.

2. Children’s rights in an armed conflict

What rights should be granted to children in an armed conflict?

- Children need food, shelter, education, family reunification, participation… and all the other rights described in the CRC. Legally, those rights are covered:
  - By the CRC that applied even in war. So all its rights have to be fulfilled in a situation of armed conflict.
  - By the International Humanitarian Law (IHL) which also covers those rights in different documents (1949 Geneva Conventions and 1977 Add. Prot. I and II)

No need for an additional Protocol in that case.

- Children also need protection from attacks. It means not to be attacked, as all the persons who do not take part in the conflict and cannot defend themselves. Unfortunately, present norms do not give the adequate protection from attacks to children.

3. International Humanitarian Law (IHL) and CRC

It is impossible to speak about protection in war without mentioning International Humanitarian Law. In fact, IHL is the international instrument that States gave themselves to protect the persons that are not or not anymore involved in combat. CRC and IHL are complementary. This complementarity is underlined by the CRC art. 38.1 (“to ensure respect for rules of IHL” relevant to children) and CRC art. 38.4 (In accordance with their obligations under IHL…).

In war, IHL recognizes two categories:

- the combatants (members of an armed force or an armed group)
- the non combatants (civil population, soldiers that cannot combat anymore (wounded, ill, prisoner, dead, …)). It protects from attacks medical personnel also, but this is not the matter of this presentation.

The first category can be attacked (within certain limitations). The second one cannot be attacked; it is legally protected from attacks.
These two categories are the base of the legal protection in war. A child who is shot during a combat is considered as a combatant and can be attacked. A wounded child soldier that cannot combat anymore is protected.

All the efforts of the international community of children rights to protect children in armed conflict were, are and will be, to make legally impossible for a child to be a combatant. In that manner, he/she cannot be attacked.

4. Children protection from attacks

Children can be combatants (child soldiers) and non-combatants.

4.1 Non-Combatant Children’s Protection

All the rights of the CRC apply during armed conflict. For this category, it applies more specifically art. 38.1 (“to ensure respect for rules of IHL (...) relevant to children”) and 38.4 (“States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict”) which asks proactive protection from States.

About IHL, the IVth Convention of Geneva relative to the Protection of Civilian Persons in Time of War (Geneva, 12 August 1949), and some articles of Add. Prot. I and II, protect non-combatants children through norms protecting civil population in general and norms targeting children specifically. Those norms cover differently children during an international conflict and an internal conflict.

OPAC in its preamble underlines this existing protection:

Condemning the targeting of children in situations of armed conflict and direct attacks on objects protected under international law, including places generally having a significant presence of children, such as schools and hospitals,…

Then, non-combatant children are legally protected from attack by the CRC and IHL. In that case also, no need for an additional Protocol.

4.2 Combatant Children’s Protection

The best Protection for a child in an armed conflict is Not to be involved, it means to be a non-combatant. How to do that?

- Not to be recruited: this is feasible only if it is legally impossible to recruit children under 18 years and this is a difficult issue.
- Not to take part in hostilities : being recruited or not, children under 18, shall not participate or be used in combat.
- Finally, if children participate in hostilities they have to be demobilized (if recruited or enlisted), rehabilitated and reintegrated into society.
Like the Preamble of OPAC says “There is a need to increase the protection of children from involvement in armed conflict,” (OPAC, Preamble)

OPAC tried to answer to this necessity and was meant to make impossible for children to become combatants. However, being a negotiated tool, it has not completely achieved its goal. So after OPAC, there is still no whole legal protection: children might be recruited and might participate in hostilities still.

4.2.1 Not to be recruited

Historical process
In 1977, international community asks States to refrain themselves from recruiting children under age of 15 (Additional Protocol I, art. 77) and to give priority to the oldest children between 15 and 18. Thirty years ago already, States felt the imperative to ban the recruitment under 18 years. ICRC has estimated in 1997, that the majority of States (70%) set the minimum age of recruitment to 18 years.

Why ?
- First, because persons between 15 and 18 years recruited (even if they do not take part in hostilities) loose the protection given to civilians and can be attacked.
- Second, because sometimes is difficult, and even more during wartime, to possess adequate birth certificates. Recruiting younger than permitted is not so difficult. Increasing the limit to 18, give a better protection from recruitment for children younger than 15. Their physical appearance can make more explicit the evidence of their young age.
- Third, because often children used in hostilities are exploited (sexual exploitation, forced labour).
- Finally, because in an internal armed conflict, if a child between 15 and 18 is captured, he/she does not profit to the special protection provided to children under age of 15 (education, family reunification) (Add. Prot. II, art. 4).

In 1989, like mentioned previously, CRC took the same phrasing in its article 38.3 than Add. Prot. I and brought no real advancement in that matter.

In 1995, 26th International Conference of the Red Cross and the Red Crescent “took note of the efforts of the Movement to promote a principle of non-recruitment and non participation in armed conflict of children under the age of 18 years” (ICRC).

In 1997, the International Criminal Court makes the recruitment and the enlistment of persons under 15, in international or in internal armed conflict, a war crime.

In 1999, Convention No 182 of the International Labour Organisation’s (ILO) relative to the ban of the Worst Forms of Child Labour, in its article 3, imposes the ban of forced or compulsory recruitment of children (it means under 18) for use in armed conflict.

An historical momentum that OPAC promoters exploited.
OPAC

In fact, OPAC bans compulsory recruitment under the age of 18. This is a real protection against their involvement in hostilities, because under war pressure, States need all trained person and it is really tempting to use the incorporated children in combats. “To preclude the presence of children in military units is therefore an important safeguard to avoid their involvement in hostilities” (Helle).

Unfortunately, art. 2 is followed by art. 3, which makes possible to recruit voluntarily between 15 and 18 years. This is the weaker article and the biggest failure of the Protocol.

Art. 3 weaknesses considerably art. 2 because it is so easy to disguise a compulsory recruitment as a voluntary one; even if the 4 first paragraphs of art. 3 try

- to increase the minimum age of voluntary recruitment,
- to ensure a special protection for the children recruited and
- to guaranty the voluntary aspect of the recruitment (voluntary, consent from legal guardian, complete information on the obligations of military life, reliable proof of age, …).

Even more, article 3 suffers from an important exception in the paragraph 5: “the requirement to raise the age for voluntary recruitment does not apply to schools operated by or under the control of the armed forces.” (Helle) This exception can create dangerous situations for children following this kind of schooling:

- “students might be considered as members of the armed forces” and be attacked by consequence (ICRC);
- if there is a military training the temptation to employ them in moment of need is too high for the armed forces.

In Nepal, the compulsory recruitment does not exist and the recruitment of children is illegal under 18 years since 3-4 years it.

4.2.2 Not to take part in the hostilities

Historical process

In 1977, IHL bans for international armed conflict the direct use of children under age of 15 in hostilities (Prot Add I art. 77). For internal conflicts, it bans their use in hostilities (Prot Add II art. 4), securing them a better protection in the latter.

However,

- The difference of the direct and the indirect participation in hostilities has to be defined. This definition has also to be accepted by all (experts, armed forces and armed groups). This consensus is difficult to find. For example some exclude spying activities and others not.
- Children who take indirect part in hostilities are not protected from attacks. They are considered as combatant and can be attacked.
• In the reality, the combatant children who do not take a direct part in hostilities will be easily involved in combats.

In 1989, CRC took the same protection than Add. Prot. I banning the direct part in hostilities under the age of 15 (art. 38.2).

In 1995, the (26th) ) Congress of the Movement of the Red Cross and the Red Crescent recommended that the States member to “take all feasible steps to ensure” that children under age of 18 do not take part in hostilities.

In 1997, as for the recruitment, the International Criminal Court judges the use of persons under 15 in hostilities (international armed conflict and internal) a war crime. ICC makes the ban compulsory (add. Prot I and CRC speak more about “shall refrain”).

OPAC

In 2000, the General Assembly adopted OPAC, which in article 1 ban the direct employment of children under the age 18 in the hostilities. This is another achievement of the OPAC.

However, it asks to not take “a direct part in hostilities” and not “take part in hostilities” like asked in Add. Prot. II. This means that, according to Helle, children might “participate in military operations such as gathering information, transmitting orders, transporting ammunition and foodstuffs, or acts of sabotage”.

4.2.3 To demobilize, to rehabilitate and to reintegrate into society

Historical process

This aspect of the problematic is new, in fact nor CRC neither IHL do not mention demobilization in their texts.

At contrary, about rehabilitation and reintegration, CRC, in its art. 39, asks the States “to take all appropriate measures to promote physical and psychological recovery and social integration of a child victim of (...) armed conflict.”

OPAC

OPAC, in its art. 6 par. 3 (after speaking about implementation and promotion of the Protocol, underlying that this issue was not a priority for States), asks that people recruited or used violating this protocol must be demobilized, assisted for recovery and reintegrated into society. This has opened the way of various processes of demobilization.

In 2007, 78 States, including Nepal, signed the Paris Principles and Commitments: guidelines on disarmament demobilization and reintegration of child-soldiers.

Mister Chandrika Khatiwada will let us know Nepal’s situation on that matter.
5. Armed groups obligations

We have seen that the CRC’s and OPAC’s provisions have to be applied in international and internal armed conflict. In the latter, what are the obligations of armed groups involved in internal conflicts?

OPAC, in its art 4, prohibits the armed groups to recruit or use in hostilities (not a direct part in hostilities) children under 18. The best protection we can hope. What the OPAC’s promoters wanted to achieve for all Parties in an armed conflict.

Furthermore, States accepted an international instrument of law to regulate their internal conflicts. In fact, States are very sensitive in their regulation. We can see that in the difference of the norms applied in international conflict and internal ones. The latter are frankly less regulated.

But, is this article effective to prevent the use and the recruitment of minors?

- First, the phrasing employed is less strong (should and not shall).
- Second, this article imposes States the prosecution to the persons who contravene to this interdiction, but this norm is a little deterrent:
  - To take arms against the State is a big risk with heavy penal consequences (often death sentence), be prosecuted for recruiting minors cannot be worst.
  - And States have often lost control in the territories controlled by non-State groups. How can they assure the application of the law?

Another, and I think the most important weakness of article 4, is the double standard that it introduces. It jeopardises an important principle of the IHL, the equality of treatment between the Parties - this is different from the reciprocity. The double standard goes against the moral acceptation of this norm by an armed group and makes more difficult the work of the activists that try to make children’s rights and IHL applied in the field.

6. International cooperation

Finally, OPAC, in art. 7, asks to States member to assist other States to apply this Protocol in the matters of prevention, demobilization, recovery and reintegration.

For example : Switzerland in 2005 submitted its report on OPAC to the Committee on the Rights of the Child where it has listed all its action “to the implementation of the Protocol, including through technical cooperation and financial assistance, and description of multilateral, bilateral or other programmes”.

Switzerland mentioned, in this report, its “support Radio Okapi in the Democratic Republic of the Congo, which has made a major contribution to informing and raising awareness of the issue of child soldiers among the Congolese population” (p. 16).
In a broader sense, international cooperation prevents recruitment and helps demobilization. In fact, assisting communities to keep a decent life or to improve their situation, can be a deterrent to join armed forces or armed groups and a motivation to demobilize.

**Conclusion**

Finally, the achievements of OPAC are:

- it raises to 18 the age of direct participation in hostilities
- It raises to 18 the age of compulsory recruitment
- It asks to States parties to demobilize, reintegrate and recover children recruited, enlisted or used in armed conflict
- And, in the spirit of CRC, it promotes international cooperation

The major failures are :

- It does not raise to 18 the age of voluntary recruitment: taking into account the fact that it is not difficult to disguise compulsory to voluntary, this failure jeopardizes all the achievements of the OPAC.
- It permits the indirect participation in hostilities for children between 15 and 18 years old.

In conclusion, OPAC consolidates legal protection from recruitment and participation in hostilities and the weaknesses of the text can be attenuated by a strict interpretation made by the Committee on the Rights of the Child.
THE RIGHTS OF THE CHILD:
FIRST ASSESSMENT, AFTER TWENTY YEARS...
Dr. Hc Jean Zermatten, IDE Director

1. Introduction

No other international treaty has ever had such a reception: 193 countries have signed and ratified this binding instrument, and the two latecomers are soon expected to rally around the common movement, as if offering a marvelous gift to the United Nations Convention on the Rights of the Child (from now on the Convention or CRC), which will be celebrating its 20th anniversary next November 20. In the history of human rights, this is very probably a record!

Making an assessment of these first 20 years is a difficult task, as we might run the risk of presenting a long list of complaints for violations of children's rights—which occur all over the world on a daily basis—or describing the recurrent problems come across by States in the implementation of the CRC. In the following account, I will mostly try to point out the key areas of concern, but I will also mention a few events that have marked the past 20 years and the progress accomplished.

2. The Convention

The CRC is typically designated as the convention of the 3 Ps. P for Provision, P for Protection, and P for Participation. The first two Ps are not really new, because in the history of the development of the rights of the child, adults have seen the child as a being in the process of growing up, materially dependent on adults, who should enjoy specific provisions, and with a status of vulnerable person that deserves special protection.

The CRC realizes this vision of the child guaranteeing him provisions (services or goods) that were either already present in previous instruments (nutrition, housing, education, health), or new ones, such as identity (the child shall be entitled to a name and a nationality, and the protection of his identity), or readaptation and reinsertion, in particular of those children who have been victims of ill-treatment.

The CRC devotes special attention to the protection of children. It takes up already known principles such as the protection against forms of abuse, labour, sexual exploitation. It elaborates on some of these principles and extends the protection to new domains: protection against torture, involvement of children in armed conflicts, trafficking and consumption of narcotics, the unjustified deprivation of liberty, and the separation from their parents without cause. The promulgation, in 2000, of two Optional Protocols on the involvement of children in armed conflict and the sale of children, child prostitution and child pornography further emphasizes this aspect of protection.

However, the CRC drives all the adults’ certainties onto the third P, that of participation, where, in my opinion, there also lies the main advancement made by this text. In effect, it grants a new status to the child, who is not only the recipient of provisions or protection, but also someone whose views we should now go for and listen to, being called upon to participate in those decisions that affect him.
The Convention does not use the term participation; however, in its famous Article 12, the CRC grants to the child the right not only to express his views, but also to see that his opinion is taken into account in any decision that may in any way have an influence on his existence. Article 12 should not be read by itself, as it goes beyond the “technical” function of gathering the child’s views; it is linked with freedom of expression (Art. 13), freedom of opinion (Art. 14), freedom of association (Art. 15), and freedom of information (Art. 17).

This is then the most spectacular innovation of the CRC, as it introduces the concept that the child, in the course of his development (Art. 5 CRC, the notion of evolving capacity) and according to the discernment that he is capable of, can participate in the life of his family, his school, his education centre and the city, in general. He is not just a passive member to be taken care of, but becomes a player of his own existence.

3. Major Events

During the timeframe comprising the past 20 years, major events have taken place:

The World Summit for Children, held in September 1990 in New York, was the first meeting of nations displaying their engagement with the Convention. This summit, with the adherence of over 100 countries, issued a Declaration and a very ambitious plan of action for the following decade, dealing mainly on issues of basic care (education and health), as well as groups of vulnerable children. This plan of action should be used by countries as a basis to develop their own national action plan. We could describe this Summit as the best approach to make the provisions adopted by the Convention more concrete and more “popular”.

In September 2000, the Millennium Summit was held in New York, where 189 United Nations members gathered to reflect upon the fate of countries in a new world that is globalized, interconnected and offering new instances for the development of man (and child), more respectful of individual rights. The Summit led to the adoption of eight Millennium Development Goals (MDGs), to be attained by 2015, which are divided in 21 quantifiable targets that are measured by 60 indicators.

- Goal 1: Reduce extreme poverty and hunger
- Goal 2: Ensure primary universal education
- Goal 3: Promote gender equality and empower women
- Goal 4: Reduce child mortality
- Goal 5: Improve maternal health
- Goal 6: Combat HIV/AIDS, malaria and other diseases
- Goal 7: Ensure a sustainable environment
- Goal 8: Develop a global partnership for development

Six of the goals affect children directly. These MDGs work as beacons for the governments’ actions in the applicable areas.

---

7 Landsdown G., The evolving capacity of the Child, Innocenti Center, Firenze, 2004
From 8 to 10 May 2002, the historical session of the UN General Assembly specially devoted to children was held in New York with the participation of the 190 States parties to the CRC (at the time) and numerous children. An outcome document was adopted—“A World Fit for Children”—focused on:

- The promotion of a healthy life,
- The establishment of quality education,
- The protection of children against abuse, exploitation and violence,
- The combat against HIV/AIDS.

The States committed to develop national plans of action, reinforce the coordination of their policies and various protection mechanisms, and monitor the situation of their children. These four main objectives should be seen as an endorsement of the MDGs and understood as related to the Millennium Summit.

Clearly, these three events have evidenced the fact that States parties are required to take a closer interest in general measures for the implementation of the CRC, with the aim of providing a favourable framework for the application of the subjective rights in the Convention. These measures mainly address the following areas: legislation (need to legislate, amend laws and make them compatible with the Convention), the issue of the direct applicability of the Convention before national instances, the coordination among the different ministries and services with responsibilities over the children’s rights (including the coordination between the national, regional, municipal and local levels), data collection, the allocation of necessary resources (funds and qualified personnel), the promotion of the Convention, and the development of awareness among the general public, parents and children in particular.

A fourth event should be mentioned, the world Study on Violence Against Children, started in 2001, following the Recommendations made by the Committee on the Rights of the Child of the UN General Assembly, and which was developed under the leadership of Prof. Pinheiro on a worldwide scale, with a regional preparation and a questionnaire administered in a very broad manner. The outcome of this study was a publication, a masterpiece in the field, the World Report on Violence Against Children, published in October 2006. It can be asserted that this is a first-of-its-kind study, so complete that it takes as the object of observation all forms of violence against children (physical, sexual, mental and psychological, under the form of abuse, neglect and exploitation). The final message of this study is lucid: No form of violence against children is justified and all forms of violence against children can be prevented.

4. Poverty, Health, Education

Poverty

Since 1990, extreme poverty in the developing world is measured by means of a standard that represents the poverty threshold. Originally established at one dollar per day, the threshold is presently at 1.08 dollar per day. Poverty reduction depends on working opportunities (decent work for all) and productivity increase. “For the past ten years, productivity has increased at

---

8 (A/61/299)
least by 4% per year in South Asia, East Asia, and in the Community of Independent States. Therefore, the number of working poor has declined in the three regions. On the other hand, the generally weak and irregular progression of productivity in sub Saharan Africa prevented working individuals in this region from escaping poverty.”

Since 2008, the world food crisis and the financial crisis of late 2008 and early 2009 bring a new look at such progression of productivity, resulting again in a rise of the number of people, children in particular, who live below the poverty threshold.

The poverty problem is very important for everyone, in particular for children. Material poverty, which certainly leads to all forms of exploitation (labour, prostitution, delinquency…); poverty of the environment, which does not offer much stimulation; the difficulty then to exercise one’s own rights… There is no space for rights if the stomach is empty!

Poverty should also be understood well over the individual situation (low income, poor access to consumer goods), thinking more about general infrastructures that enable the enjoyment of rights (education, health…). In the attainment of the MDGs, it will be necessary to make massive investments in systems allowing the development of the children’s potential.

Health

The main causes of death among children are easily avoidable diseases: pneumonia, diarrhoea, malaria and measles. They should be addressed through simple improvements in basic health care services and interventions. Malnutrition, no drinking water, lack of hygiene are the other problems that increase the potential hazards of disease. Not to mention HIV/AIDS and its effects on children (probably 25 million children will be orphaned by AIDS by 2010).

“In 2006, for the first time in history, the annual death rate of children aged under 5 has gone below the 10 million mark. However, millions of children die every year for avoidable causes, which is unacceptable. A child born in a developing country has a 13 times higher risk of dying during his first five years of life than a child born in an industrialized country… In 2006, nearly 80% of the children in the globe were systematically vaccinated for measles. This result is certainly remarkable, but it will be necessary to repeat the efforts to guarantee the immunization of every child, and to attain the goal of a 90% reduction of mortality due to measles by 2010.”

With regard to the mothers' health, the rate of maternal mortality remains very high in numerous countries. In 2005, over 500,000 women died during pregnancy, in childbirth or within the six weeks following birth. At world level, maternal mortality has declined less than one percent per year between 1990 and 2005—a rate significantly lower than the 5.5% required to attain the target of the MDGs.”

The proportion of pregnant women who are examined at least once during pregnancy has improved, rising to a little more than half at the beginning of the 1990s in the developing world. However, in terms of family planning, it is again the poor households those that suffer from poor access to health advice.

---

11 Ditto note 5
That being said, advances have been accomplished in several areas:

- a one-third reduction of mortality among children aged under 5 since 1990, in 63 countries;
- a one-half reduction of child death for consequences of diarrhoea;
- noticeable increase of vaccination rates;
- massive increment of possibilities of access to iodized salt, thus protecting nearly 100 millions of newly born from problems related to iodine deficiency (main cause of mental retardation).

Education

The millennium goal is to ensure primary education for all. “In virtually all regions, the net schooling rate in 2006 was higher than 90%, and numerous countries were on the point of attaining the goal of primary universal education. There has been a decline in the number of children of primary school age who are not attending school, which dropped from 103 million in 1999 to 73 million in 2006, in spite of a general increase in the number of children comprised in this age group.”\(^1\)

There remain pockets of resistance: in countries with civil wars or conflicts, or in countries that suffered natural disasters with lasting effects, children are at risk of being deprived of proper education. The other issue lies in the discrimination to which girls are subjected: in numerous countries, schooling rates are very different according to gender. Yet, if we approach the girls’ problem more comprehensively, it is a fact that by enabling the access to schooling by girls, cases of early maternity are reduced, new possibilities of qualified jobs open for them, the standard of living is increased, and visible social effects are produced.

On the other hand, if we look into the figures of secondary schooling, we are very far from universal education: in 2008, in developing countries, less than 54% of the children of secondary school age went to school. It would be helpful to see the effects of the quasi universal primary education producing an impact on secondary education.

Consequently, it is necessary to pursue the demand of quality education for all and fight against disparities. We should not forget that the school often provides a heaven of peace, a suitable diet, clean water, access to latrines, frequently vaccination, prevention information (HIV/AIDS, malaria…), socialization tools and an initial approach to rights.

5. Sexual Exploitation, Armed Conflicts, Two Optional Protocols

Sexual Exploitation

In 1996, the first World Congress Against Commercial Sexual Exploitation of Children took place in Stockholm. 122 governments there adopted an agenda of action to prevent and fight against the sexual exploitation of children. The discovery of this terrible reality led many states to adopt legislative measures, in particular the introduction of the notion of extraterritorial jurisdiction, which allows the prosecution and judgment of individuals acting from abroad, and promotes transborder cooperation. This was also the starting point of the commitment by tourism agencies to be concerned about sexual tourism.

\(^{12}\) Ditto note 5
In 2000, one of the results of this process of awareness was the promulgation of the **Optional Protocol on the sale of children, child prostitution and child pornography** (OPSC), which to date has been signed and ratified by 131 States.\(^{13}\)

In 2001, the **Yokohama** Conference continued the work initiated in Stockholm and materialized its global mission with the appointment of a Special Rapporteur for matters related to the sale of children, child prostitution and child pornography. From then on, numerous legislative efforts have been conducted in a high number of countries to have their legislation in accordance with the OPSC, develop awareness of this phenomenon and reduce differences. Mention should be made of the very significant involvement of NGOs such as ECPAT and UN agencies (UNICEF, ILO, WHO).

In November **2008**, the third World Congress took place in **Rio do Janeiro**, with the goal of passing from words to acts.

It is a fact that the movement for the development of awareness is important; the issue of the victims' fate is better taken into account; sexual tourism does not go unpunished any longer; the international collaboration on matters of prosecution and judgment has become more effective, also fighting against impunity. However, numerous violations of the rights of children (girls and boys) continue occurring, and the efforts made by the States in this area are still insufficient.

**Child Soldiers**

During the years 1995 – 2005, approximately 2 million children were killed in armed conflicts and many others were injured, disabled or were psychological victims of the horrors of the war, in addition to the numerous children who jumped on land mines while they were peacefully playing near their villages. Not to mention the effects of population displacements, generally suffered first by women and children: during the same period, around 35 million people were displaced, out of whom 80% were women and children!

In addition, around 300,000 children throughout the world are involved in armed conflicts, either directly on the front line or for second-line tasks, or in other missions associated with sexual exploitation, in particular thousands of young girls.

The question of child soldiers has been the object of great attention since the promulgation of the Convention. In particular, the report by Ms. Graça Machel in 1996 to the UN General Assembly, following upon a vast study conducted for several years, which drew the States’ attention to this reality of the exploitation of children by certain governments or by armed groups, and the need to undertake something seriously and develop rules designed to give a better protection to the younger against this type of exploitation. Results have been numerous:

1. The appointment of a special representative of the UN Secretary General, who maintains the States’ interest on this painful issue;

---

\(^{13}\) **Optional Protocol to the Convention on the Rights of the Child, concerning the sale of children, child prostitution and child pornography** (date of entry into force 18 January 2002), ratified by 131 States on 14 April 2009.
2. The annual debate held at the Security Council, which clearly established the connection between the violation of the children’s rights and the issues of peace and security;

3. The child protection advisers appointed to the UN missions in Sierra Leone and Democratic Republic of Congo; similarly, the peace agreements reached in Burundi, North Ireland and Sierra Leone;

4. The Optional Protocol to the Convention on the Rights of the Child, concerning the involvement of children in armed conflicts (OPAC), 2000. This protocol prohibits the mandatory recruitment before the age of 18 and establishes the age of involvement in conflicts at the same limit of 18;

5. The Rome Statute of the International Criminal Court, which defined the conscription, enlistment and use of children in armed conflicts as a war crime, and anticipated provisions of assistance and reinsertion for child victims and witnesses;

6. The Paris Principles on children associated with armed forces or armed groups, adopted in February 2007, which are not legally binding. They are expected to provide a solid basis in order to improve collaboration and give children better protection.

Advances were then remarkable, and the first decisions came up at the Special Court for Sierra Leone, punishing adults for having used children in their fighting. But there is still a lot on the plate before obtaining the universal ratification of the Protocol, light weapons control, and the abolition of anti-personnel mines.

6. Child Labour

Child labour is one area that has also received great attention from the international community, mostly in Western countries, already before the CRC, as at the time of the promulgation of the Convention, there existed Convention 138 concerning the minimum age for admission to employment. Numerous NGOs were active here, as well as the World Bank and UNICEF. These combined efforts led to the promulgation in 1999 of ILO Convention no 182, concerning the elimination of the worst forms of child labour (1999, entry into force in 2000).

This new Convention was certainly decisive, giving support to the already existing efforts to eliminate the forms of child labour that have a name: slavery, prostitution, forced labour, involvement in armed conflicts. It seemed important to raise the holistic concept of a fight against child labour that is not only waged to take children out of the exploitation circuit, but which above all envisages issues such as poverty, education, development of activities generating income for parents. Numerous NGOs are very active in this field, working alongside the ILO and IPEC programmes. Mention should be made here of successful initiatives such as:
• The Rugmark initiative, which introduced a label certification for carpets that have
been produced without child labour (South East Asia);
• The agreements reached in the valley of Sialkot, Pakistan, relative to the
manufacturing of sports goods, in particular football balls, thanks to the combined
efforts of UNICEF, ILO and the manufacturers of sports goods. These agreements are
sustained on codes of ethics that are signed by the manufacturers. The role of Western
consumers was not negligible in this success, exerting pressure on the large companies
of sports products.

While a great progress has been accomplished in the formal labour sector, problems remain in
the informal labour market. Agriculture and domestic work are still major demanders of
juvenile labour, being very difficult to control. Nearly 70% of working children are occupied
in these sectors.

7. Juvenile Justice, a new General Comment

A. The Committee on the Rights of the Child has issued its General Comment no. 1018,
"Children's rights in juvenile justice" (02.02.2007).

Why so much effort in a marginal field of childhood and adolescence, that of delinquency?
There are numerous problems that are much more important, at any rate in number, than
justice: health, nutrition, education, protection from substitution, child labour... But the
question of juvenile justice is very sensitive for at least two reasons. Because this is the area
where the State makes direct use on children of its right of punishment (public force), and
where too frequently it does so by resorting to the deprivation of liberty. And because the
States face an equation of difficult resolution: general security versus protection of child
offenders, or punishment versus care. It is interesting to review the elements that the
Committee has designated as the core elements of a juvenile justice system that is respectful
of the CRC.

1. Prevention

The General Comment recalls that one of the goals of the CRC is to promote the harmonious
development of the child, under the idea of preparing him to live a free, independent and
responsible life. The parents’ educational role and responsibilities are highlighted. The
Committee confirms its agreement with the Riyadh Guidelines, and it centres the principles of
prevention around the terms “socialization” and “integration”, which are sustained through
the family, community, peers group, school, vocational training and the world of work.

The support given to the exercise of the parental function is pointed out several times, and the
States are invited to implement programmes along these lines. In addition, the Committee
assigns great importance to early childhood education, and it states that there is a correlation
between properly taking responsibility from the child’s very young age and a lower rate of
future crime.

18 CRC/C/GC/10
2. Intervention

The General Comment makes a distinction between intervention outside the context of judicial proceedings and intervention within the context of judicial proceedings. This is a fortunate distinction in the sense that often times quite a significant confusion reigns when we use the terms diversion or alternatives, or if we appeal to the principles of restorative justice, not always knowing well which exact procedures are being referred to.

States should contemplate the intervention outside the context of judicial proceedings. This type of intervention is highly justified for the large majority of the offences committed, in particular the less serious ones. But it should not be limited solely to these situations, as the resort to such interventions results in avoiding the complexity and stigmatization of the criminal system, leads to good outcomes, is not contrary to public security, and presents advantages in economic terms.

But then, the State should establish clear rules to make these “informal” procedures function so that the victims and the offenders’ interests are preserved. Among others, the elements to be taken into account when using this type of intervention (diversion) include: the presumption of innocence, legality, the child’s right to participate in the proceedings, the right to be heard, the result, and finally confidentiality.

The intervention within the context of judicial proceedings is that referred to the competent authority. This implies that the State should have a system of instances, if possible specialized, as well as services to implement measures of a social or educational nature, aiming at limiting strictly the use of liberty deprivation.

3. The issue of age

The issue of age is the object of highly dissimilar provisions from one State to another, mostly for the lower threshold, and none of the major instruments establishes a quantified limit. So, for instance, the Beijing Rules (Art. 4) provide that the lower age should not be established at too low a level, making reference to the child’s emotional, mental and intellectual maturity.

Regarding the so called minimum age of criminal responsibility, the Committee considers first of all that it is not appropriate to have several age limits, and that it would be better, in order to avoid confusion, to establish a single limit. Then, it deems that the establishment of a minimum age is an obligation required from the States (Art. 40 (3) CRC), which contributes to eliminate from penal law intervention all children who have not reached this limit at the time of committing the offence. On the other hand, if they have reached or exceeded this age limit (but not the upper age limit, see below), they can be subject to non-formal or formal penal law interventions, respecting the principles of the CRC.

The Committee, after many discussions and taking into account various studies and practices, has expressed its opinion that the States should not establish a minimum age of criminal responsibility below 12 years. This means that the absolute lower limit considered by the

---

19 The term diversion is used in French for practical reasons. It means “the fact of making a diversion”, i.e. taking out of the judicial system those offences that would normally go to the traditional judicial system and sending them to the informal system of intervention (police or prosecutor, even specialised protection service). It has been taken from the English word “diversion”.

20 MACR, minimum age of criminal responsibility, General Comment, Section C, ch. 16
enforcement agency will be from now on placed at 12. The Committee, in addition to requiring that States should not lower the age to 12, states that they should aim at a higher age, and that establishing it at 14 or 16 represents an advance in the sense that this contributes to a juvenile justice system that is in accordance with the CRC. Inversely, countries that have higher intervention thresholds (13, 14 or 15) should not lower this limit; the Committee has been very clear in its General Comment when on section 17 it says that the States that are in such a situation are earnestly urged not to lower this limit.

Regarding the so called upper age limit for juvenile justice, the Committee considers that it should be established at 18 years, to be consistent with the definition of child (Art. 1 CRC). This is already the case in numerous countries, though not everywhere. This means that the child who has reached or exceeded the minimum age of criminal responsibility, but who has not yet reached the upper age limit of 18, will be treated pursuant to the specific rules of juvenile justice. For the States that allow the application of the law for adults to certain minors or to certain acts committed by 16 or 17-year-old minors, the Committee recommends that such cases should be eliminated with a view to achieving a non-discriminatory full application of their juvenile justice rules.

4. The guaranties for a fair trial

The General Comment devotes a very long chapter to the guaranties for a fair trial. These guaranties are not new; they are already set out by Art. 40 of the CRC and by the Beijing Rules.

The following is a summary of the points developed in the General Comment:

- The principle of non-retroactivity in juvenile justice,
- The presumption of innocence,
- The right to be heard,
- The right to effective participation in the proceedings,
- The right to prompt and direct information of the charges,
- The right to legal or other appropriate assistance,
- Decisions without delay and with the involvement of parents,
- The right to no self-incrimination,
- The right to obtain the presence and examination of witnesses,
- The right to appeal,
- The right to a free interpreter,
- The right to respect of privacy.

5. Decisions

The Committee makes a review of the decisions adopted during the pretrial phase (inquiry), in particular the possible alternatives to avoid referring all cases to court, the dispositions by the judge or the specialist juvenile court, and it devotes two sections (26 and 27) to the special issues of the death penalty and life imprisonment.

---

21 Upper limit for juvenile justice, General Comment, Section C, ch. 20
22 See sections 23 a to 23 l, General Comment
Concerning judicial decisions, the States are earnestly urged to anticipate the broadest range of possibilities, to respond to the great diversity of situations that may arise, from the points of view both of the offence and the child offenders’ personal situations.

With respect to the death penalty, the General Comment restates the prohibition set forth by Art. 37 (a) of the CRC, and also by Art. 6 (5) of the Covenant on Civil and Political Rights; it intends to specify that the decisive moment is the moment of commission of the act, not the moment of judgment. The Committee invites all the States that have not yet abolished the sentence of death for minors to do it explicitly, and to suspend the execution of pronounced sentences to death, until the decision for the abolition of such penalties is made.

With respect to life imprisonment, the Committee repeats its regularly issued recommendations, namely considering the inadmissibility of this type of punishment without the possibility of parole. The Committee recommends all States to abolish life imprisonment for minors.

6. Deprivation of liberty

It would be unimaginable to issue a General Comment without a chapter devoted to the deprivation of liberty, genuine “obsession” of the Committee since it took office. In effect, this is the area that evidences the most significant violations of children’s rights, and probably, also on this matter, the area with the strongest potential to improve the situation of children in conflict with the law.

Four major issues arise in connection with the deprivation of liberty: legality, use of pretrial detention, conditions of execution of pretrial and post-trial deprivation, and systematic, or to say the least, exaggerated resort to the deprivation of liberty as sole response, or prioritized for juvenile delinquency.

With regard to this issue, the Committee underscores in a highly insistent manner that the deprivation of liberty must be used as a measure of last resort and for the shortest appropriate period of time. With regard to pretrial detention, the General Comment restates that this restrictive measure should not be used for every offence, and that States should foresee alternative possibilities, specifically measures outside the context of the judicial system.

The conditions of execution of the deprivation of liberty are well developed; they rest upon Art. 37 (c) of the CRC, on the Havana Rules, as well as on the Minimum Rules for the Treatment of Prisoners. The primary condition for the Committee is the obligation to separate minors from adults, a separation that also involves specialized and qualified personnel. The other conditions are: obligation to maintain family ties for the duration of the execution; respect of privacy; need to implement school education, vocational training and/or occupation; health care (including mental and reproductive health); no resort to force or violence; right to make complaints or requests; regular visits and inspections of detention facilities.

In conclusion, the Committee on the Rights of the Child has produced a complete document, with arguments well presented, easy to understand and logical, to assist the States in the fulfillment of their reporting obligations on matters of juvenile justice. Clearly, this General
Comment goes well beyond its primary goal, as it provides a vision of what the ideal juvenile justice system should look like.

B. With regard to child victims and witnesses, we should refer to the promulgation of the 2005 ECOSOC Guidelines.23 These rules are designed to give a new status to children that give testimony in criminal proceedings and/or child victims.

These Guidelines have a great relevance on matters related to the rights of the child to be protected, rehabilitated and indemnified. For the first time, juvenile justice takes a genuine interest in victims. The Guidelines are associated with a Model Law for the inspiration of the States, as well as different pedagogical instruments for their implementation.

8. Conclusions

A lot has been accomplished in these twenty years of life of the Convention; however, it is clear that there is still much to be done. On my part, I am of the opinion that we have made great progress in all States with the realization that children hold rights, and by making significant efforts to develop laws and enforcement mechanisms.

At the international level, likewise, conferences multiply, the works of special rapporteurs are very useful, and several initiatives, such as the world Study on Violence Against Children, open new roads. We also believe that the discussions recently started for the adoption of a third Optional Protocol to enable the Committee to receive individual complaints go in the direction of reinforcing this global awareness around the Convention and the rights of the child.

Strength also comes through a common sharing of all the actions and efforts made by a high number of NGOs and UN agencies. Strength that is needed to face the challenges ahead of us!

1. The starting point and the proposal for cooperation

The starting point and the proposal for cooperation.

The International Institute for the Rights of the Child (IDE) along with the Institut Universitaire Kurt Bösch (IUKB) and the University of Fribourg has been leading an advanced master degree in children’s rights (EMCR) since 2002. Last graduation of the EMCR occurred in November 2008 and one of the alumni was Mr Deepak Raj Sapkota, social worker and child’s rights activist in Nepal. Mr Sapkota is the regional director of the Karuna Foundation (children with special needs) and a member of the Board of Directors of the NGO Creating Possibilities (CP). The IDE has been approached last Summer by Mr Sapkota, representing CP, in order to establish a collaboration in the field of professionals’ training. At the end of 2008, IDE and CP agreed upon a commun seminar to be held in Spring 2009 (March 30th to April 4th). Mr Sapkota proposed that the IDE support the introduction of children’s rights in the drafting of the new Nepalese constitution by sensibilizing Nepalese Parliamentarians, members of the Constituant Assembly, journalists and NGOs to the Convention on the Rights of the Child (CRC). This proposition has been accepted by the IDE and the collaboration with CP started at the end of last year.

2. Situation of children’s rights in Nepal

Nepal is one of the poorest countries of the world, where more than half the population lives in absolute poverty which mainly affects the most vulnerable groups and hampers the enjoyment of children’s rights. At the moment, the country goes out of a long internal conflict, the monarchy is replaced by a new democratic regime which is being set up. A new Constitution has been written and its promulgation will fairly modify the current legislation.

Child labour legislation and Juvenile justice

In 2002, Nepal ratified the Forced Labour Convention, n. 29; the International Labour Organization Convention n.138 and Convention n.182. At the national level, in 2002, Nepal adopted a law prohibiting the Kamaiya system. In the field of juvenile justice, the jurisdictions for minors in conflict with the law were created in all the courts of district.

Plans

Nepal conceived two national plans: “National plan of action for education” (First step: 1997-2002 and second step: 1999-2004) and “National plan of action for the childhood” (2005-2015). As regards the implementation of these two plans, it has been noticed the absence of a clear and structured coordination as well as a lack of respect of them.

Bodies active in the field of the protection of the children

Bodies for protection of the children in the Nepal, include: Central Council for the Child Welfare; Council of District for the Child Welfare; Ministry of the Woman, the Child and the Protection; Department of the Promotion of the Woman; The Section of the Promotion of the Woman at the level of districts; Committee of Development of District. At present, only some councils of district for the child welfare are really operational.

Bodies active in the field of the protection of human rights
In the human rights field the active bodies are: National Committee of Human Rights and Office of the Rights for the Child; National Committee for the Woman; National Committee for Dalits; Child Clubs for Children created in more than about twenty districts; National Fund Against Poverty; Officer of the High Commissioner for Human Rights.

Main issues of concern about children’s rights
The principal issues of concern are the difficulty of fulfilment of the Government's obligations under the Convention; the high rates of poverty aggravated by the heavy burden of the foreign debt and the existence of numerous traditional faiths and customs and the system of castes.

Specific problems of correspondence with the CRC
Nepal has not fully taken into account in its legislation and policy-making the general principles of the Convention. Insufficient attention has been paid to all groups of children, including children belonging to minorities, to lower castes, to the Dalit community, children of very poor families, children in rural areas, disabled children, children placed in institutions, children victims of sale, trafficking and prostitution and children living and/or working on the streets.

There is a persistent discriminatory attitude towards girls, as reflected in the prevailing son preference, the persistence of early marriages, the notably lower school attendance of girls and their higher drop-out rate. A large number of children are involved in child labour, including in the informal sector, particularly as domestic servants, in agriculture and in the family context. Primary education is not compulsory for all children and the level of illiteracy among children and adults is very high. Appropriate measures have not yet been taken to effectively prevent and combat any form of ill-treatment and corporal punishment of children within the family. Insufficient steps were undertaken to ensure birth registration of children.

The national legislation does not provide any directives on how the child can express his/her views freely and in the matters concerning them, their opinion is unlikely to be heard or respected. However, the existence of many children's clubs through all the country is a happy and promising initiative.

3. Ratification status of Nepal

Nepal ratified the CRC on 26th January 1990; this instrument entered into force on September 14th 1990. The State party did no reservation, nor declaration.

Nepal presented its initial report in 1995 and its second and third combined report in 2004; the fourth report is expected for 2010.

Nepal ratified the OPAC on September 8th 2000; this instrument entered into force on January third 2007. The initial report is expected for 2010.

Nepal ratified the OPSC on September 8th 2000; this instrument entered into force on January 20th 2006. The initial report has been presented in December 2008.
4. Objectives

The general objective of the seminar was:

*To influence relevant stakeholders on the importance of the implementation of Children’s rights in Nepal.*

The specific objectives were:
At the end of the seminar, participants will be able to gain:

- Understanding on the Children’s Rights in Nepal and its implementation status
- Awareness on the theory and practices on Children’s Rights (National and International)
- Basic training for Child Rights Advocates of Constitution Assembly members and of Media Personnel
- Understanding on Child Rights provisions that should be in Nepal’s new constitution

5. Programme

**INTRODUCTION TO CHILDREN’S RIGHTS IN NEPAL: FROM THEORY TO PRACTICE**

<table>
<thead>
<tr>
<th>Day 1: Monday March 30th 2009</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Audience: Members of Constituent Assembly</strong></td>
</tr>
</tbody>
</table>

9:00 a.m. Welcome Speech by Consortium Chairperson – Mr Milan Dharel
The Welcome speeches underline the necessity to introduce children’s rights (CR) in the New Nepalese Constitution in order to improve the situation of Nepalese Children, in particular the girls, the indigenous children and the nomadic groups, as well as the education and health rights. Nepal has done a lot, but the work to do is still huge.

9:45 a.m. General introduction to the Convention on the rights of the Child Mrs Paola Riva Gapany, IDE Deputy Director and Mrs Clara Balestra, IDE scientific collaborator
Due to the difficult Nepalese post-conflict situation, the general introduction of CRC is complemented by the CRC’s characteristics that might contribute to the stability of the State and a durable peace.

11:15 a.m. The Work of the CRC Committee: State reports and concluding observations Dr hc Jean Zermatten, IDE Director
The State should use the Concluding Observations as the Guidelines of children’s rights implementation for the following 5 years.

12:00 a.m. CRC reporting in Nepal, Chandrika Khatiwada independent children’s rights expert
Mr Khatiwada underlines the highlights of the last reporting (2005) and plans for the 2010’s report. For the OPAC’s report currently in elaboration, the lecturer presents the chosen approach and the steps already taken.

1:30 p.m. Why progressive investing in children? Mr Kulchandra Gautam, Former Deputy Executive Director of UNICEF
Investing in children is not an expenditure, it is investing for the future, an investment in the New Nepal. CR in the Constitution should secure a budget for CR’s implementation.

12:15 p.m. Introducing children’s rights at the constitutional level: the example of Brazil

Mrs Andressa Curry Messer, IDE scientific collaborator

In 1988, Brazil - coming out from a dictatorship and in an instable situation (as Nepal today) - inscribed children’s rights in its Constitution; several positive consequences for children have resulted from this process.

1:45 p.m. The new Nepalese Constitution and Child Rights Mrs Mona Sherpa

Status of Rights of Children in Nepal and Child Rights Expert Submission

---

**Day 2: Tuesday March 31st 2009**

*Audience: Journalists*

9:00 a.m. Welcome speech by CZOP- Mr Govinda Adhikari

Mr Govinda introduces the importance of the balance between the respect of the victims’ rights and the journalist’s duty to provide information.

9:15 a.m. Convention on the Rights of the Child in relation to Constitution Building

Mrs Clara Balestra, Mrs Andressa Curry Messer

The importance to introduce children’s rights in the national Constitution is outlined by two examples: Switzerland and Brazil.

09:55 a.m. The Committee on the Rights of the Child: Reporting Process, Medias Contributions and their Role: Dr hc Jean Zermatten

The presentation underlines the role and importance of the media in the process of monitoring the States during the reporting process. The Concluding Observations should be the frame of reference for the journalists’ reportages during the following 5 years. Journalists have the duty to diffuse the concluding observations.

10:45 a.m. Media and Children’s rights: Mrs Paola Riva Gapany

Mrs Riva Gapany exposes the importance for the journalists to respect CR and Media Ethics in their work with some striking examples.

---

**Day 3: Wednesday April 1st 2009**

*Audience: NGOs*

9:00 a.m. Welcome Speech by Creating Possibilities - Mr Govinda Adhikari

9:15 a.m. General introduction to the Convention on the rights of the Child (part I)

Mrs Paola Riva Gapany and Mrs Clara Balestra

Due to the difficult Nepalese post-conflict situation, the general introduction of CRC is complemented by the CRC’s characteristics that might contribute to the stability of the State and a durable peace.

11:00 a.m. General introduction to the Convention on the rights of the Child (part II): the Committee on the Rights of the Child: the NGO’s contributions

Dr hc Jean Zermatten
Role and importance of the NGOs in the process of monitoring the States by the Committee.

12:15 p.m. The Nepalese system of children’s rights (CR) and their implementation- Mr Deepak Raj Sapkota
In Nepal, CR implementation is the responsibility of the Ministry of women, children and social welfare. They are also mainstreamed in the main Ministries and State’s Organs (Police, Courts…) as well as in the 75 districts of the country (Child Welfare Districts). Children can count also with INHR and its Children Desk, an organized civil society fighting for their rights (2 mains consortiums), the 10’000 Children’s Clubs and a strong international cooperation.

12:35 p.m. Introducing children’s rights at the constitutional level: the example of Brazil Mrs Andressa Curry Messer
In 1988, Brazil - coming out from a dictatorship and in an instable situation (as Nepal today) - inscribed children’s rights in its Constitution; several positive consequences for children have resulted from this process.

2:30 p.m. Non-discrimination principle, Dr hc Jean Zermatten
The right of non-discrimination is a challenge. Its application demands to set aside preconceptions and to re-examine the effectiveness of its implementation and of the right of all children not to be discriminated.

3:00 p.m. Child Protection and Gender discrimination, Mrs Paola Riva Gapany
Discrimination against girls inscribed in historical review of Women’s Rights Movements

---

**Day 4: Thursday April 2\(^{nd}\) 2009**

*Audience: NGOs*

9:00 a.m. Optional Protocol on children involved in armed conflicts Mrs Clara Balestra
The legal protection of children in an armed conflict: the OPAC’s achievements and failures.

10:00 a.m. Nepal and the implementation of the OPAC, Chandrika Khatiwada
Mr Khatiwada underlines the difficult situation of 2973 children living in the military camps of the Maoist Army and the stakes for their demobilization.

12:45 p.m. Questions and Discussion
Despite the governmental promises, 2973 children continue to live in the military camps of the Maoist Army. What can international community do in order to oblige the Nepalese government to demobilize them?

---

**Day 5: Friday April 3\(^{rd}\) 2009**

*Interaction with Children: how CRC Committee considers children Organized by child consortium*
6. Participants

The seminar lasted 4 days and a half. During this period, approximatively 340 participants have been attending one or more sessions of the training, including the audience at the National Human Rights Commission, at the Judicial Academy and at Save the Children (April 2nd). Among them, 30 children, 12 Parliamentarians, about 30 journalists and of course many human rights professionals representing either NGOs or the Consortium (CZOP and Consortium). Ms Sandra Bernasconi, for the Swiss Agency for Development and Cooperation attended the first day. UNICEF Nepal and Save the Children were present the whole week; their participation to the seminar was crucial as they are very active in promoting children’s rights and children’s participation. They contributed to the success of the training thanks to their logistical help and support, such as sessions moderator, didactic material distribution. The continuous presence of UNICEF and Save the Children, as the major institutions implementing children’s rights in Nepal, underline the interests of professionals to introduce children’s rights in the new constitution. The challenge for the IDE was to adapt the content of its conferences to the public, who was sometimes very aware of children’s rights, completely ignorant, or had a basic knowledge of it. It is amazing to observe that children from the child’s clubs were the most participative and « experts » of their own rights. Parliamentarians and members of the constituent Assembly showed interest in introducing children’s rights in the new constitution, even if they stressed out the large number of human rights to be introduced, such as indigenous rights, women’s rights and so on; but they ensure the IDE that they will be a voice for children. Journalists were very interested in what was a new concept for them. Indeed, they ask for a special training on children’s rights and medias which is relevant as they are the professionals who can convince Nepalese civil society and politicians to introduce children’s rights in the new constitution, as well as raising awareness in a child friendly manner among the people.

7. Speakers

From Switzerland:

- Dr hc Jean Zermatten, IDE Director
- Mrs Paola Riva Gapany, IDE Deputy Director
- Mrs Clara Balestra, IDE scientific collaborator
- Mrs Andressa Curry Messer, IDE scientific collaborator

From Nepal:

- Mr Govinda Adhikari, Creating Possibilities President
- Mr Milan Dharel, Consortium Chairperson
- Mr Deepak Raj Sapkota – Karuna Foundation Country Director and Executive Member of Creating possibilities
- Mr Kulchandra Gautam, Former Deputy Executive Director of UNICEF
- Mrs Mona Sherpa - ActionAid Nepal Women’s Rights Coordinator
- Mr Dharmendra Jha, Chair person of Federation of Nepalese Journalist's Association
- Mr Dharma Raj Shrestha, Executive Director, central Child Welfare Board (CCWB)
8. Side Events

❖ **WELCOME DINNER**

On the 30th of March, IDE invited around 50 people to an official dinner at the hotel Shangri-la. Mr Govinda Adhikari, (President of Creating Possibilities) welcomed the participants, and the Director of IDE explained the objectives of the seminar, as well the great momentum of having the possibility to influence the drafting of the new Nepalese Constitution. The Chairperson of the Nepal Supreme Court, Mr Justice Khil Raj Regmi, answered and gave the official greetings or the Nepalese Authorities.

❖ **DINNER WITH THE EXECUTIVE BOARD OF UNICEF**

On Thursday 31th March 2009, in town. Mr Zermatten has been invited by the EB of UNICEF to join for dinner. This was a great opportunity for the IDE Director to meet with the people and to have the possibility to explain, in bilateral talks the goals and different activities of the Institute. UNICEF appreciates the possibility for the senior officers to be trained in the MCR, in Sion. Mrs Elena Manfrina from the DDC was one of the members of UNICEF EB. Were also present the Director Regional for SAAR, Mr Daniel Toole, the Representative for Nepal, Mrs Gillian Mellsop, and the Chief of Social Policy and Decentralization in Nepal, Mrs Beth Verhey.

❖ **MEETING WITH THE SECRETARY OF THE MINISTRY OF WOMEN, CHILDREN AND SOCIAL WELFARE, MRS BINDRA HADA BHATTARAI**

The IDE team (with Creative Possibilities) met with the Secretary on Thursday April scd, in the hotel from 8 to 9 a.m. The discussion was very interesting and dealt with the issues of:

- International adoption: Nepal is about to ratify the Hague Convention on intercountry adoption, but there still exist resistance to designate a Central Authority. Till now, about 500 children are given in adoption abroad, in EU and the US, but through intermediaries which are not registered nor controlled. This situation poses a lot of problems.

- The 1992 Children Act is being revised; it will be presented to the Parliament, this year, hopefully. There exists a risk that the adoption will be taken out of this Act, in order to have a specific law. The secretary will fight against this trend.

- Training: the professionals depending from the Minister need training. The Secretary hopes that Institutes like IDE could provide training on the CRC and on the social work in general. The current level of knowledge is poor.

**Meeting with the National Human Rights Commission**

The IDE team (with Creative Possibilities) met with the Secretary on Thursday April scd, at the NHRC’s Office, in town from 1:00 p.m. to 2:00 p.m.

The Director of IDE explained the role of independent Human rights body and the mandate of this institution, as well as the necessary independency towards the Government.

The two members (Mr Ram Nagina Singh and Mr Gauri Pradhan) and the Executive Secretary expressed their appreciation in receiving the delegation. Mr Pradhan explained in a very comprehensive manner the mandate of the Nepalese NHRC, in investigating the cases, the promoting role of its commission and the possibility for children to complaint directly. He evoked also the links between the Commission and the OHCH, Office in Kathmandu. The Commission is decentralized in the five regions and has also 5 sub regional offices.

According to UNICEF and to the DDC, the effectiveness of the NHRC is questionable.
Lecture at the national Judicial Academy, on Thursday, 02.04.2009, from 2:30 p.m. to 4:30 p.m.

Mr Zermatten gave a lecture in the Academy on the theme “The new General Comment no 10 issued by the CRC Committee: the Rights of the child in Juvenile Justice”. Approximately 60 participants (judges, prosecutors, lawyers) attended this lecture. A period of Q&A followed. The Executive Director of the Academy, Justice Tope Bahadur Singh, expressed its deep gratitude to Mr Zermatten for the presentation and to IDE for its action.

❖ Lecture at Save the Children, on Thursday, 02.04.2009, from 5:00 p.m. to 7:00 p.m.

Mr Zermatten gave a lecture at Save (new unification of three different Saves, in the new Office, in the Center) on the theme “Where do the rights of the Child stand?” About 30 people attended this conference and the session of Q&A was especially interesting due to the very good knowledge of all the participants. The new Director, Mr Gunnar F. Andersen offered letters of appreciation to every member of the IDE team, as well as a souvenir.

Dinner at the Swiss Agency for Development and Cooperation

The Director of the Swiss Agency invited the IDE team and CP’s leaders (Deepak and Govinda) to a dinner on Thursday, 02.04.2009, at 7:30 p.m. at the Residence. Interesting exchange of views on children’s issues in Nepal, but also on the political and social situation. Mrs Sandra Bernasconi was present; she expressed her appreciation on the venue of the seminar and on the content of Monday, where she attended.

9. The Consortium, a very good Initiative

Two networks Active in the field of Child protection, children’s rights or linked to children, comprising 72 member organizations, have come together as “CZOP and Consortium” to promote child rights in the new Constitution. Taking the opportunity afforded by the invitation issued by the Constituent Assembly (CA) Committees for expert inputs, in this submission, CZOP and Consortium calls for the inclusion of comprehensive child rights and associated structures that enable the realization of these rights in the new Constitution. CZOP and Consortium has organized a far-reaching series of national and district consultations held with children, beginning in 2006 -including a girl child’s national consultation and a general consultation with children- aimed at capturing the voices of children and their concerns regarding child rights in the new and interim Constitutions. Through these grassroots efforts, as well as extensive research, CZOP and Consortium has identified key changes that need to be introduced in the new Constitution in order for Nepal to ensure these rights are fully realized, and for the country to meet its international obligations. These changes have been recognized by the major political parties in Nepal, who signed a Child Rights Commitment in March 2008, which outlines nine points that the parties will work towards to promote the realization of child rights in the new Constitution. The current seminar can been as one of the activities of the CZOP and Consortium

The vision of CZOP and Consortium is that many of the fundamental rights that apply to adults should apply equally to children. Due to their particular vulnerabilities and needs, children require special constitutional measures to guarantee the full realization of the rights to which they are entitled. CZOP and Consortium envisages its recommendations, taken together, as the most effective means of constitutionally enshrining the rights of children and promoting their realization through appropriate State structures.
IDE Team welcomed this initiative and expressed the opinion that this coalition of NGOs must not only serve for the drafting of the Constitution but must extend its mandate to all the reporting process of Nepal to the CRC Committee and promote, at the national, regional, sub regional and municipal level the children’s rights, as a political issue.

10. Children’s clubs, a model for Switzerland?

The IDE was impressed by the participation of children from 10 different children’s club (Child Development Society, Concerns, Consortium of children, Children club from Baktapur…). They are currently about 9'000 to 10'000 children’s clubs in Nepal with about 20 members each, from different social classes. These clubs are either ruled by NGOs or schools, but children themselves select objectives to realize and search for new members. The activities of the young members are either « political », such as raising awareness about the CRC or about special children’s issues, or « citizen » activities such as cleaning street, visiting children in hospital… These clubs are not sporting or leisure club. The involvement of young people in that kind of activities is amazing and is completely non-existant in Switzerland: the issue of children’s participation is rarely raised in the field, and concretely, besides the Swiss Youth Parliaments and maybe the Swiss Scouts there is no Youth organization run by and for kids who aims to lead « political » and citizen activities in full respect with art. 12 of the CRC. As the whole world will be celebrating the 20th anniversary of the CRC, Switzerland must wonder if the Nepalese model of child’s club could not be implemented in our country as well; the issue of children’s participation and their involvement in civil society is mostly the concern of academicians and not of professionals dealing directly with children, like schoolteachers, NGOs... The Swiss vision of children is still protective and paternalistic. The IDE team agrees that an event with children such as the meeting with the children’s club of Nepal, could never take place in Switzerland, due to the lack of interests by stakeholders. This is a pity and it is time to change.

11. Follow up

On Friday 03.04.2009, a debriefing took place between Creating Possibilities and IDE. The general opinion can be summarized as such:

- The organization was good to very good
- Programation was ok
- Participants were satisfied
- Logistical issues have been controlled
- Financial contributions will cover all the costs

More specifically, the partners are satisfied with the possible impacts on the politicians and the journalists, in the current drafting process. All people begin to reflect rights, and not only protective measures. The media gave a good image of the seminar (2 TV interviews of Mr Zermatten, 3 articles in the written press).

Interactivity with the journalists was excellent. Maybe, with the NGOs’ group, it was a less critical attitude.

The session with children was simply excellent and the Q&A demonstrated the potential of all this young participants; and more globally, the potential of this movement at the national level.
The very amazing networking done by CP was impressive and the seminar’s success is due principally to this factor. All the NGOs have been contacted, including the international ones and UN Agency like UNICEF. The fact that the CZOP and Consortium has been associated in the organization of the event is and important added value.

For the future the discussion turns around 3 points:

- Having a high level seminar with leaders of the people in charge of drafting the new Constitution, with an “official” representation of the CRC Committee; the date cannot be fixed now, but will depend from the timetable of the Constitution’s process.
- Having an, or several activities of training for professionals. Many ideas are possible: journalists, justice people active in JJ, social workers, police officers, students at the universities…
- Developing a long term cooperation with Creating Possibilities, seen like “an agent” of IDE in South Asia.

After discussion, partners agreed on:

- Organizing, at the right moment, a high level meeting between high level politicians in order to ensure the inclusion of comprehensive child rights and associated structures that enable the realization of children’s rights in the new Constitution. The possibility to associate formally or informally the CRC Committee will be explored by IDE.
- Going on with training: for the time being, priority has to be given to journalists, since their work around the process of the new Constitution is very crucial. A three days seminar for and with them is feasible. The stakeholders in Juvenile Justice are also a good target group; but the training of these officers must be a second priority.
- Creating Possibilities has to explore the possibility to build a curriculum in the universities (or in one University) in the sense of a Diploma in Children Rights (DCR).
- IDE counts to have a long term cooperation with CP. The discussion is open on the way to formalize it or not. IDE does normally proceed with “representatives” in different regions but can imagine to sign a MOU, if it could help. But this process is a long one and the Board of IDE has to take the final decision.

Practically, the two entities will produce their report on the seminar, by the end of April. IDE will publish a working report on the issues raised in the seminar, in English, by the end of the semester. If possible, CP will translate it into Nepalese.

IDE and CP will determine together, the timetable for the future activities.

12. Financial aspects

CP has supported all the local fees: transports, rooms for the seminars, food, drinks and the logistical aspects of the organization (documents, copies, secretariat, staff, interpretation, security…). No per diem was provided to the participants.

IDE provided an amount of US$ 3’000.- for the local organization and paid for the flights, fees and hotel accommodation of its team. He will also assume the production costs of the working report.
QUESTIONS AND ANSWERS

Main issue:
how can we change our mind from a paternalistic issue towards a new approach of children?
The main problems listed related to the above issue are:
data? mechanism of implementation? monitoring?

Some questions from the audience

1) How to keep the CRC as a living instrument? How to strengthen it?
2) Complaint procedure for children? Individual complaint?
3) What about political rights Children don’t have them because they are not supposed to work?
4) How do you perceive the actions taken by Nepal?
5) How can we make the reporting procedure more effective and government more accountable?
6) Court system? Access to court? ECHR?
7) Participation of children?
8) Child club? What next
9) What about federalism?

Some answers
To implement the CRC and to ensure the monitoring you need a powerful civil society. It is up to it to develop a strong synergy with all the partners, including the committee of the CRC. It is important for the follow up as well. To complain, you need a mechanism of complaint, such as court, regional court, but also administrative ones. But the most important, is to make sure that the rights are known by the owners (children) and able to ask for their implementation. But collaboration between institutions and different mechanism is crucial ad needs to be improved. 10’000 children’s club in Nepal is a huge advantage, besides being a chance for the children themselves, such as socialization, prevention of abuses, and so on… It is up to the Nepalese children themselves to decide which direction to give to their actions, but there are seeds of political rights in these clubs. Their participation is crucial and the CRC General Comment on this topic (art. 12 CRC) will be issued next May.

Federalism seems for many newly independent countries the ideal way to implement democracy, while including every minorities, social groups in the process. However, federalism is the fruit of history and many times the result of a compromise between many different interests and /or communities. Switzerland is a strict federalistic country, like Canada and the USA. But federalism has some disadvantages regarding children’s rights. With a federalistic system of 26 cantons (States) which are constitutionaly required to adopt policies regarding families, for example, the risk of having 26 different policies regarding allowances, or education or access to health may lead to unequal treatment, thus discrimination between children from different cantons. This is a point to take into consideration.
Child development society, Advisory board of Consortium, Suprabat child club, Baktapur child club, Concern and Consortium

Some questions from the children

1) How can children be aware of their rights?
2) Children are understood from 0 to 18 years, but the baby in her mum’s belly?
3) What about children not enrolled in school? They are not aware of their rights?
4) How many countries known about the CRC?
5) Did you hear about violations of the CRC? Are there researches?
6) When someone violates CR, is he/she punished?
7) What is the history of the CRC? Before, there were no rights for kids?
8) What about disabled children? Do they go to school with others?
9) What is the situation of children in Switzerland?
10) Do you have child clubs in your country?
11) Even in Europe discrimination exists? Which kind?
12) What are the IDE’s programs for children?

Children should ask for their rights; if they are not taught in school, they must ask for them in the clubs; then it is up to them to explain the CRC to their fellows, even if they are completely illiterate. Education is the best way to keep children out of stones carvings. In Switzerland, we do not have any child’s clubs and it is a pity! I am sure that Nepal should inspire our country!

The CRC has been ratified by all the countries of the world except Somalia and USA. The challenge is to diffuse these rights to the most concerned, the children!!! Babies in mummy’s belly may be protected as well, and the pregnant mother should be careful of him or her.

In our country, Switzerland, the situation of children is good, but can be improved. There is discrimination towards migrants, poor people; slums start to appear and there is a risk of violence. Violations of children’s rights occur everywhere and there are researches about violations, investigations, courts judgements, and reparation to victims! But sometimes it is difficult to go along the whole procedure.

Disabled children go to school with non-disabled students. They are in the same classroom and try to follow the same program; when it is too difficult, there is a special educator for the disabled child to have special lessons with him or her during the class with the others and in the classrooms. Everybody is happy with this solution, enhancing the full participation of disabled children and learning children to become respectful citizens.

The IDE trains childhood professionals on the CRC; in addition, it has information program for a large audience thanks to its website http://www.childsrigh.ts.org; the IDE organizes seminars, like this one in Nepal, in order to train various kind of professionals, in touched with children. Currently, the IDE works in different programs based in China, Western Africa, Switzerland and starts with Nepal.

Some questions from the experts (Adults) to children

Why did you join the child club?

It came with the school and had pleasant activities;
1) I want to inform children workers in stones carvings that these clubs exist and that they should enrol to schooling;
2) I want to bring children their rights and to improve the situation of street children;
3) I want to take care of disabled children;
4) I want to become a good citizen.

How functions children’s clubs?

Meeting every week, 2 weeks or once a month (depending on disponibilities), more often with an adult adviser, where:

a. we decide what to do since the next meeting (awarness campaign, cleaning the environment, etc.)
b. we play or make sport
c. we take courses
d. we make a wall journal

Do you think that your rights are respected in Nepal?

1) discrimination of cast system
2) ignorance of parents
3) poverty, parents do not think that education is important
4) government could to something, but it is to busy with its rights
5) laws are contradictory

What are your dreams once adult?

1) Journalists
2) Social worker
3) Nurse
4) Computer engineers
5) In the army
6) Mechanics
7) Lawyer.