

UN Convention on the Rights of the Child: Protection

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ABSTRACT

The child requires to be surrounded by protection by adults, whose duty it is to create an optimal environment for the child to live and develop. These actions serve to realize the welfare of the child, which is a fundamental objective of the provisions of the Convention on the Rights of the Child and other normative acts. The protection of the child's well-being is served by the rights of the child, which emphasize the child's subjectivity as a result of being human. A person's age cannot be a discriminatory criterion in the exercise of freedoms and rights. The best interests of the child guide the interpretation of provisions and the application of the law. At the international level, the Committee on the Rights of the Child plays a special role in this regard, and presents its views on the protection of children's rights through its general comments on the provisions of the CRC. The main purpose of the paper is to try to identify child protection options through the lens of general comments containing the position of the Committee on the Rights of the Child on how to understand the provisions on the protection of the child from all forms of violence and the obligations of states parties to the CRC in implementing its provisions in the practice of national authorities.

KEYWORDS

child protection, children's rights, general comments, violence against, the child, risks of the digital world, preventive action

1. Introduction

Children's rights are part of human rights and, as such, are covered by the protection inherent to every human being. In addition, they were collected under a normative act of international law dedicated exclusively to the protection of children's rights, the Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989.¹ The Convention represents the greatest achievement of the international community in the protection of children's rights, as it provides an axiological and normative basis for action on behalf of children at global, regional,

1 Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989, Dz. U. 1991, No. 120, item 526, hereinafter: CRC.

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national and local levels. It contains a comprehensive, although not exhaustive, catalogue of children's rights. It comprises a preamble that sets out general principles and 54 articles arranged in three parts. The first part comprises 41 articles dealing with the State's obligation to realise the rights of children. Part Two, Articles 42–45, deal with the ways in which the State's obligations to realise children's rights can be enforced and monitored. Part Three, Articles 46–54, sets out the principles for accession to the CRC. The catalogue of children's rights is based on the premise that the child is an autonomous subject, however, owing to his or her physical and mental immaturity, requires special care and legal protection; as a human being, he or she requires respect for his or her identity, dignity and privacy; the best environment for the upbringing of the child is the family; and the State is to support the family, but not to replace it in its functions. Complementing the provisions of the CRC are the Optional Protocols, which broaden the scope of protection: the Optional Protocol on the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, adopted in New York on 25 May 2000, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, adopted in New York on 25 May 2000, and Optional Protocol to the Convention on the Rights of the Child on communications procedure, adopted in New York on 19 December 2011, which sets out a procedure for submitting notifications (individual complaints), that is, creating a mechanism for asserting the rights guaranteed by the CRC. Undoubtedly, owing to their age, lack of life experience and knowledge, as well as inability to make informed life decisions, children find themselves at a considerable disadvantage vis-à-vis adult persons and should, therefore, be provided with special protection.

The adoption of the CRC is a significant achievement for Poland in the field of the international protection of children's rights, as it was the Polish government delegation that proposed to the UN Commission on Human Rights the enactment of a relevant convention and submitted a relevant draft on 7 February 1978 which formed the basis for further work on agreeing with the final version of the document. Professor Tadeusz Smaczynski prepared a draft of the CRC, commissioned by the Ministry of Foreign Affairs. In turn, Professor Adam Łopatka was the chairman of the working group established by the UN Commission on Human Rights to draft the final version of the draft CRC.

The concept of a child is fundamental in determining the scope of protection. The most commonly invoked criterion for defining the concept of a child is the age criterion, which delimits childhood. According to Article 1 of the CRC, a child is any human being under the age of 18 years, unless he or she attains the age of majority earlier in accordance with the law relating to the child. This means that upon reaching the age of 18 years, a person loses the status of a child and becomes an adult. The Convention does not distinguish between the intermediate periods between childhood and adulthood, such as infancy and adolescence. However, it is noteworthy that the age of children that the CRC has adopted as the ultimate limit of protection may be modified by national law, which may allow for an earlier age of majority. The

content of the provision in Article 1 of the CRC was meant to be a compromise between those who demanded an explicit formulation that one is a child from conception and the representatives of those States who defended the legality of abortion. However, the failure to specify the lower limit at which a human being would be considered a child has led some States to lodge reservations. This issue led to the assumption in the work on the CRC that it would be left to States Parties to fully and precisely define the moment that can be considered the beginning of childhood, and consequently, the moment that should be considered the beginning of human life.²

The definition of a child adopted in the CRC has been controversial from the outset, particularly with regard to the need (or lack thereof) to extend protection to children who are conceived, that is, those who are in the prenatal period of life. Human life is a continuum characterised by a certain process, initiated at conception, involving successive stages of development up to birth, and then linked to the stages of infancy, childhood, youth, adulthood and old age until death.³ Ultimately, it was decided not to indicate the initial period of protection, thus leaving it up to individual States to regulate this issue at the national legislative level. This implies that it is left to the States Parties to the CRC to decide on the humanity of the child during the prenatal period (in a juridical sense). Considering this issue from the perspective of the conceived child, the current state of affairs is the worst possible. This leads to *de facto* differentiation in the rights of conceived children because of the existing differences in the legislation of different States. In extreme situations, this can even lead to a negation of the right to life under conditions which, in another state, would not provide any grounds for this. The absence of an unequivocally conclusive, binding provision on this issue at the level of international law, which directly and explicitly protects human beings from the moment of conception, constitutes an important legal lacuna which, in view of its evident interests, should be filled as soon as possible.⁴

The protection of the rights of the child guaranteed by the CRC is ensured by the Committee on the Rights of the Child, which monitors how States Parties fulfil the obligations assumed as a result of their ratification of the document. However, it is neither an international tribunal nor a body with the power to issue legally binding rulings, which significantly weakens its position as a guarantor in protecting children's rights under the CRC. It comprises 18 independent experts from various countries worldwide elected by 196 States which have ratified the CRC. States Parties are obliged to report to the Committee every five years. The Committee receives additional information from various sources. Based on this, the Committee holds a dialogue with a delegation from the country and subsequently produces concluding observations with recommendations. A certain form of influence on States Parties is the general comments, through which the Committee on the Rights of the Child seeks

2 Smoczyński, 1999, p. 40.

3 More extensively: Lis, 2022, p. 200 et seq.

4 Jaros, 2015, pp. 56-57.

to guide States Parties as to how to understand the provisions of the CRC and motivate them to adopt measures to implement them in national legislation.

The condition for a normal life and development of a child is freedom from fear and all forms of violence, both from adults and other children. This study aims to indicate the possibility of protecting children's rights through the prism of general comments denoting the position of the Committee on the Rights of the Child regarding the provisions for protecting the child from violence, to provide the reader with a legal understanding of children's right to protection against maltreatment in their homes and by caretakers, and the obligations of States Parties in implementing this right in practice and policy.

The starting point for presenting the position of the Committee on the Rights of the Child on the issue of violence against the child is the selected provisions of the CRC, which refer to the various manifestations of child abuse; these are Article 19, indicating the need to protect the child from all forms of physical or mental violence, harm or neglect or ill-treatment or exploitation, including sexual exploitation; Article 32, on the protection of the child from economic exploitation; Article 34, providing protection from all forms of sexual exploitation and abuse; and Article 36, which extends to child protection from all other forms of exploitation. They give rise to obligations to adopt measures to implement the content of these provisions in the practical operation of States Parties, ensuring that every child has a space free from any form of harm. General comments are used to interpret the provisions, most notably General comment No. 13 (2011): The right of the child to freedom from all forms of violence of 18 April 2011,⁵ Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2019) on harmful practices of 8 May 2019,⁶ General comment No. 21 (2017) on children in street situations of 21 June 2017,⁷ and General comment No. 25 (2021) on children's rights in relations to the digital environment of 2 March 2021,⁸ the key findings of which will be used to outline the resulting CRC standard for the protection of the child from all forms of violence.

5 General comment No. 13 (2011): The right of the child to freedom from all forms of violence, 18 April 2011, Available at: <https://www.refworld.org/docid/4e6da4922.html> (Accessed: 30 August 2023).

6 Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2019) on harmful practices, 8 May 2019, Available at: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/joint-general-recommendation-no-31-committee> (Accessed: August 30, 2023).

7 General comment No. 21 (2017) on children in street situations, 21 June 2017, Available at: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-21-2017-children-street> (Accessed: August 30, 2023).

8 General comment No. 25 (2021) on children's rights in relations to the digital environment, 2 March 2021, <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-25-2021-childrens-rights-relation> (Accessed: 30 August 2023).

2. Legal nature of general comments

The Convention on the Rights of the Child often uses general clauses and evaluative phrases that leave States Parties free to interpret. Consequently, the same provisions are understood differently, and therefore, the scope of children's rights under the CRC varies from one State Party to another. A tool to counter such practices are the general comments, through which the Committee on the Rights of the Child presents its understanding of the provisions of the CRC, which are de facto interpretations of the legal norms contained therein. This is because there are obstacles to understanding human rights, which undoubtedly include the rights of the child,⁹ both at a practical and theoretical level. General comments are used to clarify the norms relating to children's rights and to comment on issues that are of particular relevance to specific provisions of the CRC relating to these rights and, consequently, to clarify the obligations of States Parties with regard to children's rights. The Committee's activity in harmonising the understanding of children's rights serves to universalise them, which is undoubtedly a commendable activity. Consequently, children's rights under the CRC are uniformly understood, and the scope of their protection is approximated by all States Parties. Nevertheless, despite the process of universalisation of human rights, a uniform understanding will never be achieved. Consistency in this issue is reduced to mere verbal garb and various statements. Underlying this differentiated understanding of human rights are different social philosophies, conceptions of freedom, equality, the State and its role in the realisation of human rights.¹⁰

General comments aim to monitor respect for children's rights worldwide. The issue of monitoring includes the reports of States Parties to which the Committee refers in its reports. The Committee's monitoring activities include responding to problems involving violations of children's rights at several different levels. In connection with its monitoring, the Committee, based on its analyses of the submitted reports and the conclusions drawn from them, produces general comments of universal value.¹¹ To date, the Committee has produced 25 general comments on various issues contained in the provisions of the CRC and Optional Protocols. Consecutively, these commentaries concern: General comment No. 1 (2001) – the objectives of education; No. 2 (2002) – the role of independent national human rights institutions in the protection and promotion of children's rights; No. 3 (2003) – HIV/AIDS in the context of children's rights; No. 4 (2003) – adolescent health and development during adolescence; No. 5 (2005) – general actions to implement the CRC; No. 6 (2005) – the treatment of unaccompanied and separated children residing outside their country of origin; No. 7 (2005) – the implementation of children's rights during early childhood;

9 The child is simultaneously the subject of general human rights standards and the standards contained in the CRC.

10 Jasionek, 2004, p. 12.

11 Stadniczeńko, 2019, p. 121.

No. 8 (2006) – the child’s right to protection from corporal punishment, cruel or degrading forms of punishment; No. 9 (2006) – the rights of children with disabilities; No. 10 (2007) – the rights of children in the juvenile justice system; No. 11 (2009) – children of indigenous peoples and their rights under the CRC; No. 12 (2009) – the child’s right to express his or her own views; No. 13 (2011) – the child’s right to freedom from all forms of violence; No. 14 (2013) – the right of the child to have his or her best interests safeguarded as a paramount consideration; No. 15 (2013) – the right of the child to the highest possible standard of health care; No. 16 (2013) – the impact of the business sector on the rights of the child; No. 17 (2013) – the right of the child to rest, leisure, play, recreational activities, cultural life and the arts; No. 18 (2014) – harmful practices (issued jointly with General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women); No. 19 (2016) – public funding for the realisation of children’s rights; No. 20 (2016) – realisation of children’s rights in adolescence; No. 21 (2017) – children in street situations; No. 22 (2017) – general principles on children’s rights in the context of international migration; No. 23 (2017) – State obligations on children’s rights in the context of international migration in countries of origin, transit, destination and return; No. 24 – children’s rights in the justice system; and No. 25 – children’s rights in the digital environment.

Although the Committee’s ability to interpret the understanding of the provisions of the CRC, which determines the concrete actions of States Parties for protecting children’s rights by contributing to their realisation in practice, is an activity that serves the child, the legal nature of general comments is controversial. The CRC does not provide for the Committee’s authority to express its position in the form of general comments, which means that such an activity is beyond its competence. According to the wording of Article 44(4) of the CRC, the Committee’s powers are reduced to the possibility of requesting from States Parties ‘further information relating to the implementation of the Convention’ and, based on Article 45(d) of the CRC, ‘to make suggestions and general recommendations’. It does not appear from the wording of Articles 44 and 45 of the CRC that the Committee has acquired the competence to interfere in the internal affairs of States Parties and to issue legally binding decisions or interpret legislation in the form of general comments. States Parties to the CRC have not granted it such a power. If it had been the will of the States Parties to the CRC to grant the Committee such a power, it would have been expressed by an appropriate provision, as was the case with the European Court of Human Rights established under the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950. However, States Parties opted not to include a provision in the CRC granting the Committee similar powers. *Ultra vires* interpretations of the provisions of the CRC undermine the principle of *pacta sunt servanda*, a fundamental condition of which is the consent of States Parties to be bound by a particular agreement expressed with full knowledge of the content of the obligations arising therefrom. Recognising the right of the Committee to issue binding interpretations of the provisions of the CRC would *de facto* lead to granting the monitoring body the right to change its content and meaning without the consent of the States Parties.

The Committee cannot create new rights and obligations that do not directly flow from the provisions of the CRC. Despite this, the rules of the procedure adopted by the Committee explicitly mention *general comments* as one of the means of its disposal in Paragraph 77. It follows that the Committee has single-handedly created a new tool for its activities without having any legitimacy to do so. The Committee cannot grant itself powers that have not been conferred on it by the signatory States of the CRC, and cannot create them *ex nihil*. Moreover, the Committee cannot gain title to them by the mere fact of even exercising them for a long time.¹²

Therefore, because the right to issue general comments is not derived from the CRC, the interpretations of its provisions and the Committee's recommendations expressed therein do not have the character of binding legal decisions; rather, they have the character of non-binding legal opinions. However, they are not entirely devoid of meaning. Opinions, such as the law, are ways of thinking, arguing, and persuading. The law is not only determined by the intention of the legislator as expressed in the law but is also shaped by what lawyers say and write about it. In some sense, the law is the product of lawyers.¹³ Opinions combine the elements of reporting, history, logical deduction, and persuasion, weaving all of these elements into a single narrative. Recipients are persuaded by this narrative if they are in contact with an easily accessible normative perspective directed at themselves and their communities. An opinion has to make sense of the law as something we do together, which means it has to make sense considering everything we believe in. This is what convinces us when we opt a particular version of the narrative that we believe to be the only one. Important facts constitute the context in which the law is seen. A given issue often entails conflict in the relevant context, the best example being attitudes toward abortion - do we see it in the context of infanticide or reproductive freedom? Work on context often occurs through analogy, which is the dominant form of legal argument.¹⁴

General comments, such as legal opinions, can affect the legal systems of States Parties in at least two ways. First, they can be tools for reinforcing the pressure exerted by national or international NGOs on governments, which may even lead to legislative changes at the national level. Second, they are often invoked by actors in international law who, unlike monitoring bodies, have the power to make legally binding decisions and oblige States to adopt certain measures.¹⁵ General comments are used to pressure States Parties that have ratified and implemented the CRC to implement certain legislative measures, either to align their domestic law with the opinions presented by the Committee or to change their practice in the direction set by these opinions. It should be noted that such opinions are always marked by a degree of subjectivity, as they express not only the knowledge of the members of a given body, but also the way they perceive the world and value phenomena through the prism of their

12 Dorosinski, 2016 (Accessed: August 30, 2023).

13 More extensively: Zirk-Sadowski, 2002, pp. 7-19.

14 Kahn, 2016, p. 117.

15 Dorosinski, 2016 (Accessed: August 30, 2023).

own convictions determined by worldviews, religion, customs and the environment. For law, does not function in isolation from reality in an axiological vacuum, but always in some context. Understanding the law always involves the evocation of sense, belief, and knowledge that do not come from the text itself subjected to analysis. Therefore, solving legal problems by drawing up a legal opinion is similar to judging the circumstances of specific cases by applying laws.¹⁶ Consequently, in general commentaries, the expressions used in CRC provisions are those using semantic rules that are modified by axiological assumptions. In particular, this applies to the interpretation of indefinite terms, such as the welfare of the child, moral norms, the child, or the safeguarding of the best interests of the child, as well as controversial terms arising from doctrinal disagreements or autonomous concepts.¹⁷

Considering the above, it should be stressed that the general comments could only be considered binding on the condition that States Parties confirm (acknowledge) the way in which the Committee on the Rights of the Child has interpreted the legislation and consequently aligned their actions with the resulting guidelines.

3. Protection of the child against violence considering General comment No. 13

The protection of the child from violence is guaranteed by Article 19 of the CRC:

‘1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms¹⁸ of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment, or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. 2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.’

Article 19 CRC is the core provision for addressing and eliminating all forms of violence against children.

¹⁶ Leszczyński, 2015, pp. 5 and 7.

¹⁷ Stadniczeńko, 2019, p. 346.

¹⁸ The term ‘all forms’ indicates that there are no exceptions, which is considered necessary because even the slightest possibility of any form of acceptable maltreatment will be misused easily. Whether all instances of maltreatment should be prosecuted is another matter. Sandberg, 2018, p. 19.

For comments on how to interpret Article 19, see General comment No. 13. The comments aim to guide States Parties in their efforts to understand their obligations under Article 19 and outline necessary measures. Furthermore, it aims to overcome isolated, fragmented and reactive initiatives to address child caregiving and protection; promote a holistic approach to implementing Article 19 based on the Convention's overall perspective on securing children's rights; and provide States Parties and other stakeholders with a basis from which to develop a coordinating framework for eliminating maltreatment. In stressing these objectives, the Committee demonstrates the necessity for States Parties to develop an 'integrated, cohesive, interdisciplinary and coordinated' child protection system¹⁹.

According to the Committee, any form of violence against a child is evil—an action that violates the child's dignity. Safeguarding and promoting the child's fundamental right to respect his or her dignity and physical and psychological integrity by preventing all forms of violence is important for promoting the entire set of rights contained in the CRC. The Committee highlighted that children who have not experienced violence are less likely to engage in violent behaviour, both in childhood and adulthood, which adds to the argument that effective implementation of Article 19 of the CRC is the key to preventing all forms of violence. In this context, how far one should go to protect family unity if the child is at risk. In the preventive stage, before maltreatment escalates, retaining family unity is the clear starting point and chief rule. However, at a certain point it may be necessary to break family unity by removing the child or, as it may be, the perpetrator from the home. The separation of a child from its parents is generally not desirable. Where prosecution leads to a parent being sentenced to prison, it may not be in the best interests of the child. Therefore, the primary aim of the investigation should be to stop violence through support and education rather than punishing parents. Prosecution authorities need training to conduct assessments of children's best interests in such situations. Children's best interests should be the primary consideration when deciding on measures to protect him or her. Therefore, the well-being of the child is not defined in normative acts, which means that the burden of determining its meaning lies each time on the entity applying the law. The court is obliged to account for children's well-being during courtroom proceedings. At times, strict adherence to the letter of the law proves insufficient, as the rights of the child must also be considered. Children must not be forced to bear the negative consequences of overly casuistic or imperfectly worded regulations. Hence, judicial discretion ought to be considered in terms of categories such as experience and maturity, as well as values such as objectivism, impartiality, and guardianship over the rule of law, which further emphasises the key role of the judge in determining and shaping the child's situation.¹⁹

Violence has been defined as the exploitation of one's advantages over a child and encompasses all forms of physical and psychological violence, harm or abuse, neglect

or negligent treatment, maltreatment or exploitation, including sexual exploitation. This has particular resonance in the context of Article 34 of the CRC:

‘States Parties undertake to protect children from all forms of sexual exploitation and abuse. In order to achieve these objectives, States Parties shall, in particular, take all appropriate national, bilateral and multilateral steps to counter: a) the inducement or coercion of a child to engage in any illicit sexual activity; b) the use of children in prostitution or other illicit sexual practices; c) the use of children in pornographic performances and materials.’

The devastating impact of violence on children has health, developmental and behavioural consequences. Health consequences include fatal injuries, non-fatal injuries (which can lead to disability); physical health problems (including developmental difficulties, later lung, heart and kidney disease and sexually transmitted infections); mental defects (affecting academic and work performance); mental and emotional consequences (feelings of rejection and abandonment, disrupted sense of attachment, trauma, fear, anxiety, insecurity, lack of self-esteem); mental health problems (such as anxiety and depressive tendencies, hallucinations, memory difficulties and suicide attempts) and propensity for risky behaviour (related to the use of stimulants and early sexual initiation). Developmental and behavioural consequences (such as truancy, aggression, antisocial behaviour, self-destructive behaviour, and destructive interpersonal relationships) can lead to relationship breakdown, removal from school, and conflict with the law, among others. Experiences of violence increase the risk of further feelings of being victimised and the accumulation of violent experiences, including intimate relationship with a partner in which violence is present.

Considering these serious consequences, both individually and socially, there can be no condonation of violence against children in any form, thereby ruling out the possibility that certain forms of violence are legally and/or socially acceptable. This also applies to minor chastisements. One form of violence is neglect or negligent treatment, which means failure to provide physical and mental needs, protection from danger or medical care, birth registration and other services when those responsible for the care of children have the means, knowledge and access to these services. Neglect includes but is not limited to physical neglect (inadequate care, including that resulting from lack of attention, failure to provide the child with basic needs, including adequate food, shelter, clothing and basic medical care); mental and emotional neglect (lack of emotional support and love, chronic lack of attention to the child, failure to notice signs and signals sent by the child, exposure to partner violence, use of alcohol and drugs); neglect of the child’s physical and mental health (primarily as a result of denial of needed medical care); educational neglect (failure to comply with the law requiring the provision of education to the child by attending school or similar institutions); or child abandonment.

Psychological violence is characterised as mental maltreatment, psychological, verbal and emotional abuse or neglect concerning the satisfaction of a child’s needs.

Psychological abuse is defined as any form of sustained harmful interaction with the child, for example, making the child believe that he or she is worthless, unloved, unwanted, threatened or that he or she is only needed to meet the needs of others; threatening, terrorising and intimidating; exploiting and bribing; pushing away and rejecting; isolating, ignoring and favouring; non-repetition of emotional responses; neglect of mental health, medical and educational needs; insulting, name-calling, humiliating, insulting, mocking and hurting a child's feelings; exposure to domestic violence; condemnation to isolation, placement in solitary confinement or in degrading and derogatory conditions of confinement; and pervasive cyberbullying. Physical violence refers to all corporal punishment and other forms of torture, cruel, inhumane or degrading treatment or punishment, and physical abuse or shaking as a means of symbolic acceptance into a group by adults or other children. Corporal punishment amounts to the use of physical force to inflict pain or cause discomfort, regardless of the severity. It includes various forms, primarily hitting the child with hand or an instrument; kicking, shaking or throwing the child; scratching, pinching, pulling hair or rubbing ears; forcing the child to remain in an uncomfortable position; setting fire to the child, burning or forcing the child to eat.

The following have been recognised as sexual exploitation and abuse: soliciting and forcing a child to engage in unlawful or psychologically harmful sexual activities; using a child for sexual exploitation for financial gain; using a child in sexually explicit audio-video material; child prostitution; sexual slavery; child trafficking (within and between States); selling children for sexual purposes; and forced marriage. Sexual activities between children are not considered sexual exploitation if their age exceeds the threshold set by the State Party as permissible for engaging in sexual activities.

All forms of advocacy and episodes of violence, particularly by mass media, are unacceptable, leading to the creation of a schematic and stereotypical image of children, primarily excluded, functioning on the margins of social life, and often portrayed as violent or committing crimes. This determines the approach to the development of State strategies, based primarily on the use of punishment, including violence, as a means of responding to alleged or actual offences caused by children.

Poverty makes it difficult for parents to care for their children properly. It entails challenges in providing children with basic necessities, such as food, clothing and shelter, and may also lead to various forms of parental behaviour that are detrimental to children. Parents may have to leave to find work in other parts of the country or abroad, leaving behind their children without proper care. Instead, they stay at home, and stressful situations may lead to emotional neglect of the children and even physical violence or other forms of abusive behaviour. Thus, poverty reduction strategies, including financial and social support for families at risk as well as housing and employment policies, are important social policy measures to prevent violence against at-risk children. Therefore, Article 19 Paragraph 2 requests that States Parties establish social programmes to provide the necessary support for the child and for those who care for the child.

Violations of children's rights may be committed not only by parents and guardians, but also by State authorities at any level who may harm them, directly or indirectly, by failing to take effective measures to implement their obligations under the CRC. Such omissions primarily include the failure to adopt or review a child protection system; inadequate implementation of laws or other regulations relating to children; insufficient provision of material, technical, and human resources for the protection of children's rights; and inability to identify, prevent and respond to violence against children. The lack of adequate tools for monitoring, assessing, and evaluating the progress and effects of efforts to eradicate violence against children is another omission. In taking action for children, the right to freedom from violence can also be violated by performing duties that do not consider the child's best interests, opinions and developmental goals.

States Parties have an obligation to make every possible effort in the legislative, administrative, social and educational fields to protect children from all forms of physical or mental violence, harm or neglect or ill-treatment or exploitation, including sexual exploitation. Commitment refers to the broad range of actions that must be taken to effectively address and respond efficiently to all forms of violence. The development and implementation of an integrated, coherent, interdisciplinary and coordinated system for protecting the rights of the child, encompassing a diverse catalogue of actions for the benefit of the child, is part of this objective. States Parties are obliged to prohibit, prevent and respond to all forms of violence. Legislative solutions are to formulate child-friendly legislation and the promotion/implementation of measures related to its application aimed at eliminating all forms of violence against children. Administrative actions should reflect the responsibility for developing strategies, programmes, monitoring and overseeing the systems required to ensure that children are protected from all forms of violence. Social actions should reflect a commitment to protect children's rights and provide basic and targeted services to individual recipients. Educational activities address the issue of attitudes, traditions, customs and behaviours that tolerate and promote violence against children; encourage open discussion of violence; and involve the media and the public. They should also support the child's life skills, knowledge and right to expression, and develop skills to establish and maintain good contact with children.

A system for protecting the rights of children should be based on a holistic approach, considering the child's physical, mental, spiritual, moral, psychological and social development. The creation of such a system requires providing comprehensive and integrated actions aimed at establishing social programmes to meet the needs of the child and to support those who have custody of the child, and other forms of preventive interventions to identify, inform, initiate and conduct relevant proceedings before law enforcement authorities and, where necessary, court intervention. Such interventions must consider the social, cultural traditions and legal system of the concerned country.

The protection of the child must begin with prevention, that is, proactive prevention and explicit prohibition of all forms of violence. The primary way to protect

children from all forms of violence is by preventing its occurrence. Therefore, States Parties should take all necessary measures to ensure that adults are responsible for the care, direction and upbringing of children and respect and protect their rights. Prevention includes health and other measures to promote a respectful, non-violent upbringing of the child and to address the root causes of violence that lie with the child, family, perpetrator, community, public and non-public institutions and society. Another type of prevention involves educational measures to change attitudes in society toward children and their upbringing, to violence in general and more specifically to violence and other harmful behaviours towards children. They should address the attitudes, traditions, customs and behavioural practices which condone and promote violence against children. In particular, awareness campaigns should be conducted to promote positive child-rearing and combat negative societal attitudes. Parents and other caregivers should be educated regarding this. Prevention endeavours do not absolve States Parties' obligation to respond promptly to all forms of violence. To develop effective prevention initiatives, it is necessary to identify risk factors for individuals or groups of children and their caregivers and to recognise the signs of violence to intervene as promptly as possible when it occurs. This requires all those who come into contact with children to be aware of the possible risk factors and forms of violence, to be able to recognise and assess them, and to know and be prepared to take appropriate steps, including providing immediate protection. States should develop safe, well-publicised, confidential and accessible support mechanisms for children, their representatives and others to report violence against children, including the use of 24-hour toll-free hotlines and other ICTs. The Committee further states that reporting should be required at least by professionals working directly with children. The obligation to report should cover instances of violence, as well as suspicion or risk of its use.

Moreover, States Parties should ensure that all incidents, suspicions and risks of violence can be reported (reported). Considering this, States Parties should develop universally accessible and confidential mechanisms to support children, their caregivers or bystanders to report violence against children. The investigation of reports must be conducted by qualified persons who are knowledgeable and appropriately trained in their assigned tasks, with an approach that is sensitive and respectful of the child and his or her rights. Therefore, establishing reporting mechanisms entails the need to provide training and support for personnel who receive the information on how to act upon it in a meaningful manner. Once a child's experience of violence has been diagnosed, various types of medical, psychological, specialist and legal services and support may be required.

The overriding objective in making decisions concerning a child should be to ensure effective protection and unimpeded development in the spirit of the child's best interests, whereas any intervention should be as minimally intrusive as possible and tailored to the circumstances of the individual case. Considering this, the Committee recommended that: 1) children and their parents should be informed in a timely and appropriate manner by the justice system or other legitimate authorities

of their rights and options for action; 2) child victims of violence should be treated in a friendly and sensitive manner throughout the process, considering their personal circumstances, needs, age, gender, disability, degree of maturity, and with full respect for their physical, mental and moral integrity; 3) the involvement of the justice system should be preventive where possible, which involves promoting positive behaviour and prohibiting negative behaviour; and 4) the principle of speedy proceedings should be applied in all proceedings involving child victims, respecting the rule of law and a fair trial. The intervention of the judiciary should be part of a coordinated and integrated cross-sectoral approach, supporting and facilitating other qualified persons to work with children, parents, caregivers and entire communities and improve access to the full range of services related to the care and protection of children. Considering the specificity of cases involving children, specialised juvenile and family courts and criminal procedures tailored to children who are victims of violence should be established. All those working with and for children and dealing with such cases should receive interdisciplinary training on the rights and needs of children from different age groups and procedures involved.

The provisions of Article 19 should be interpreted in the context of other provisions of the CRC, primarily Articles 2–6 and Article 12. In the context of Article 2 of the CRC, States Parties should implement measures to ensure the right of every child is protected from all forms of violence without any discrimination based on race, colour, gender, language, religion, political or other opinion, national, ethnic, or social origin, property, disability, birth or status. As guaranteed in Article 3 of the CRC, the best interests of the child are served by preventing all forms of violence and promoting positive parenting, considering the need to implement prevention as an overarching principle in the framework action, coordinated at the national level, and investing in human, financial and technical resources to implement an integrated system of support and protection that considers the rights of the child. The right of children to have their best interests considered a priority in all actions affecting them is central to all decision-making. This requires each child to be treated as an individual, and is highly relevant to the child protection system. Protection from all forms of violence must be understood not only in the sense of the child's right to life and survival but also in the sense of the child's development, which must be interpreted in accordance with the overall goal of child protection (Article 6 CRC). Crucial to the protection of the child from violence is the child's involvement, therefore, the child's views must be considered with due seriousness as a mandatory element in the process of protecting the child's rights (Article 12 CRC). Children's empowerment and participation under Article 12 are crucial aspects of preventing violence prevention. In turn, Article 4 obliges States Parties to adopt appropriate measures to implement all the rights contained in the CRC, which is essential for its proper understanding. Simultaneously, the right to protection from all forms of violence includes civil rights and freedom. To make this a reality, States Parties must adopt all possible measures to fully implement children's rights, particularly focusing on the most excluded groups. The implementation of Article 19 of the CRC requires recognition of the overarching

role of parents, legal guardians and community members in the care and protection of children and the prevention of violence. This approach is in accordance with Article 5 of the CRC, which promotes respect for the responsibilities, rights and duties of a child's guardians to provide adequate guidance in a manner consistent with the child's developing capacities in exercising the rights.

There is no one-size-fits-all model for the prevention of violence, which means that each State is obliged to apply to its own needs, determined by local conditions and capacities, to create and improve a coordinating programme to combat violence against children. The elements to be introduced into such a programme are: a child rights approach, consideration of the gender dimension of violence against children, prevention, the overarching role of the family in childcare and protection strategies, opposition to violence and the promotion of protective factors (such as a stable family, caring parenting), risk factors (drug abuse in the family, mental health problems, poverty, unemployment), situations that are potentially dangerous for children (such as being in alternative care, mental disorders, living on the street, disability), allocation of budgetary resources, coordination mechanisms, and accountability (understood as the fulfilment by States Parties of their commitments). Coordination programmes to combat violence against children are intended to provide a common frame of reference and communication mechanisms between ministries, the State and members of civil society at all levels, with regard to the implementation of adequate measures to protect the child.

Programmes and actions must be relevant and effective. States Parties' resource constraints cannot justify their inability to take action to protect their children. The primary source of funding for child protection activities should be State budget resources.

The need for regional and international cross-border cooperation aimed at protecting children beyond the borders of one country, addressing cross-border problems—child trafficking, sexual exploitation, illegal adoptions, organ trafficking, armed conflicts, natural disasters, and their consequences—which require specific legislation, strategies, programmes and partnerships, was noted.

4. Protecting the child from harmful practices considering Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2019) on harmful practices

Gender- and age-based violence are addressed in Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child (2019) on harmful practices. It addresses harmful practices that are often associated with serious forms of violence or are themselves forms of violence against women and children. Among the

most widespread are female genital mutilation, child mutilation, forced marriage,²⁰ child marriage, polygamy, crimes committed in defence of honour and out of a desire to preserve dowry, neglect of girls, extreme dietary restrictions, virginity testing and related practices, tying up, inflicting wounds that cause scarring, marking with stigma/tribal marks, corporal punishment, stoning, violent initiation, widowhood practices, accusations of witchcraft, infanticide and incest, body modifications conducted for the sake of beauty or marriageability of girls and women (such as fattening, isolation, the use of labial discs and neck lengthening with semen rings) or for the sake of protecting girls from early pregnancy or from sexual harassment and violence (for example, breast ironing). In addition, many women and children are increasingly undergoing medical and/or plastic surgery to conform to societal norms about the body rather than for medical or health reasons. These behaviours fall within the normative context of Article 37 of the CRC, which guarantees protection against torture, cruel, inhuman or degrading treatment or punishment. Such harmful practices not only cause physical and mental suffering, but also strike human dignity and the integrity of the individual, damage health, and impede or prevent the exercise of human rights. The causes of harmful practices are multidimensional and primarily determined by gender and age discrimination.

States Parties are obligated to implement a comprehensive strategy to counter harmful practices, a mechanism to monitor efforts to protect women and children, and the free realisation of their rights. Implementing these strategies should involve a wide range of actors, including independent national human rights institutions, health, education and law enforcement professionals, civil society representatives, and those involved in such practices. The collection, analysis, dissemination and use of data related to these practices are essential for ensuring effective policies, developing appropriate strategies, formulating actions, assessing the impact and monitoring progress in eliminating harmful practices. The availability of these data allows examining current trends and enables establishing appropriate links between policies and the implementation of adopted strategies by state and non-state actors, and enables modifying according to changing attitudes and behaviours considered harmful practices.

Those providing services to women and children, particularly medical personnel and teachers, are predisposed to identifying actual or potential victims of harmful practices. However, owing to the duty of confidentiality, the right to report the occurrence of a harmful practice or the possibility of its occurrence is limited. Therefore, it is necessary to amend the law such that it obliges them to report such incidents.

The Committees recommend that States Parties adopt or amend laws to effectively combat harmful practices, leading to their eventual elimination. National laws should be aligned with standards under the Convention on the Elimination of All Forms of

20 It is particularly cruel to be forced to marry a rapist who, as a result of marrying the victim, with the consent of the victim's family, not only avoids punishment but also gains power over his victim.

Discrimination against Women and the CRC and other international human rights standards, which should take precedence over customary, traditional or religious laws that permit, tolerate or recommend harmful practices, particularly in countries with multiple coexisting legal systems. Legislation that tolerates, permits or leads to harmful practices should be repealed immediately. Women and children who are victims of harmful practices must be provided free access to justice, including the removal of legal and factual barriers to initiating appropriate proceedings such as limitation periods, the ability to hold perpetrators and those who assist or tolerate such practices.

Prevention is the first step in combating harmful practices. This can be most effectively achieved through a rights-based approach to changing social and cultural norms; empowering women and girls; building the capacity of those who come into regular contact with victims, potential victims and perpetrators of harmful practices; and raising awareness of the causes and consequences of harmful practices, including through dialogue with all those involved.

States Parties have the responsibility to challenge and change patriarchal ideologies and structures that impede women from fully exercising their human rights. To overcome the social exclusion and poverty experienced by many women and girls, which increase their vulnerability to exploitation, harmful practices and other forms of gender-based violence, they should be equipped with the skills and competencies necessary to claim their rights, including making autonomous and informed decisions and choices about their own lives. Education plays a significant role in the assertion of rights. There is a clear correlation between low levels of education for women and girls and the incidence of harmful practices. This determines the obligation to provide access to universal, free and compulsory primary education to ensure regular attendance, discourage dropouts, eliminate existing gender disparities, and promote access for most marginalised girls, including those living in remote and rural communities. The completion of primary and secondary education contributes to the prevention of child marriage and teenage pregnancy, lower rates of infant and maternal mortality and morbidity, preparing women and girls to better, more consciously exercise their right to freedom from violence, and increasing opportunities for effective participation in all spheres of life. States Parties should implement measures to increase enrolment and ensure the continuation of secondary education, including ensuring that students complete primary school; abolishing tuition fees for primary and secondary education; promoting equal access to secondary education, including technical-vocational education; and making secondary education compulsory. Information on human rights, including women's and children's rights, gender equality and self-awareness should be included in the curricula. Moreover, States Parties should contribute to the elimination of gender stereotypes, supporting the idea that schools provide age-appropriate information on sexual health and reproductive rights, including, inter alia, responsible sexual behaviour, HIV prevention, protection from violence and harmful practices.

The Committees recommend that States Parties ensure that all those who have regular contact with victims and potential victims are provided with information on harmful practices and applicable human rights norms and standards as well as on how to prevent, identify and respond to incidents of harmful practices, including mitigating the negative effects on victims and helping them access assistance. Further, it is necessary to provide training to all law enforcement personnel, particularly judicial staff, on laws prohibiting harmful practices, the rights of women and children, their roles in prosecuting the perpetrators of harmful practices and protecting victims.

Knowledge is the means of counteracting harmful practices; hence, there is a need for broad information campaigns to raise public awareness as part of larger strategies to eliminate harmful practices. In this context, mass media can play a significant role. Social and mainstream media can be important partners in raising awareness of the need to respect children's rights and eliminate harmful practices, including government initiatives to organise debates or talk shows, prepare and screen documentaries and develop educational programmes for radio and television. Further, the internet and social media can be valuable tools for providing and exchanging information and providing a space for dialogue, which should involve all those interested in counteracting harmful practices.

National protection systems need to be child-friendly, gender-sensitive and adequately resourced to provide all the necessary services to protect women and girls who are at risk of violence, including girls fleeing genital mutilation, forced marriage, and falling victims to honour crimes. To make it easier to access help, a 24-hour toll-free helpline should be established to enable victims to report harmful practices that are accessible and known throughout the country. Adequate safety and security measures should be provided to victims, including temporary shelters or specialised services provided in shelters for victims of violence. Moreover, psychosocial support is required to provide treatment for victims' psychological trauma, which may include posttraumatic stress disorder, anxiety, and/or depression. Strengthening efforts to combat harmful practices should include programmes that contribute to harnessing the capacity of judges, lawyers, prosecutors and all those interested in the law prohibiting discrimination based on gender or age and applying it in a manner consistent with the provisions of the CRC.

5. Child protection in street situations considering General comment No. 21

General comment No. 13 is universal in that it applies to all forms of violence against a child regardless of the situation in which the child is placed. The dangers of harming

a child in street situations²¹ is dedicated to General comment No. 21 (2017) on children in street situations. The concept of children in street situations covers two groups of children: the first includes children who live and/or work on the streets on their own, with their peers, or with their families; the second includes a much broader population of children who are strongly connected to the public space (the street), for whom the street plays a key role in their daily life and functions as their identifying, identity-defining element. This group includes children who periodically live and/or work on the streets, and children who do not live or work on the streets but regularly accompany their peers, siblings or families in street situations (on the streets). Children in street situations are not a homogeneous group; their diversity depends on many factors, such as age, gender, ethnicity, nationality, disability, and sexual orientation, which translate into different experiences, risks and needs.

Street situations include being in public places, which are open spaces – streets, markets, parks, squares, buses, and train stations – where children spend a significant amount of time and where their life activities are concentrated. Children in street situations in public spaces work, spend their leisure time, establish relationships, find shelters and sleep, cook, wash, but also use various types of harmful substances and engage in casual sexual activities. It is important to stress that children may engage in such activities voluntarily because of a lack of choice, out of compulsion or under the influence of violence from other children or adults. Street situations are a primary source of danger for children, facilitating the possibility of child abuse, either through violence or by taking advantage of their coercive positions.

This type of situation is addressed in Article 32 of the CRC, where

‘1. States Parties recognise the right of the child to be protected from economic exploitation, from performing work, which may be hazardous or which may interfere with the child’s education, or which may be harmful to the child’s health or physical, mental, spiritual, moral or social development. 2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the provisions of this article. To this end, bearing in mind the pertinent provisions of other international instruments, States Parties shall in particular: a) establish a minimum age level or levels for applying for employment; b) make appropriate provision for the duration and conditions of employment; c) establish appropriate penalties or other sanctions to ensure the effective application of the present article.’

This is complemented by Article 36 of the CRC, which is subsidiary to other provisions on the exploitation of the child, according to which ‘States Parties shall defend the child against all other forms of exploitation in any aspect prejudicial to the child’s

21 In the past, terms such as street children, children on the street, runaway children, discarded children, children living and/or working on the street, homeless children or street-bound children have been used to refer to children in street situations.

welfare.’ This open-ended formulation of exploitation offers the possibility of an interpretation that protects a child’s welfare in any risky situation, including street situations.

To fulfil their obligations under the CRC, States Parties should develop comprehensive, long-term strategies and support initiatives targeting children in street situations to find alternatives to those provided by the street. These strategies should be based on a holistic approach to children’s rights to ensure all-round development. The first step should be to gather information about such children to decide how best to protect their rights. Countries should adopt a cross-sectoral approach to understand how policies in one area, such as finance, affect policies in another, such as education, which in turn determine the situation of children living on the street.

The Committee called on States Parties to introduce legislation regarding the protection of children in street situations, referring to the protection of children’s rights, and to immediately remove laws that directly or indirectly discriminate against children growing up on the street, their parents or families; abolish laws that allow the arbitrary removal of children and their families from the streets or other public spaces; abolish the criminalisation of crimes committed by children, such as begging, curfew violations, vagrancy, running away from home, which are disproportionate to the gravity of the acts; abolish the criminalisation of crimes of children who have been victims of commercial sexual exploitation and moral crimes such as extramarital sex.

National child protection systems must assume direct outreach to children in street situations and consider the specific services they need. The effectiveness of such initiatives depends on understanding the local context and individualised needs of children in street situations. The most important task for States Parties is to implement measures to ensure that children in street situations have access to basic services, such as health and education, as well as justice, culture, sports and information, which condition the process of normal life and proper development.

All provisions of the CRC and the Optional Protocols are interrelated, indivisible, mutually conditional, and complementary, which means they must be read in corpore. Children in street situations are primarily addressed by: (1) articles of overarching importance to the child rights approach – Article 2 (on non-discrimination²²), Article 3(1) (on safeguarding the best interests of the child), Article 6 (on the right to life, survival and development), Article 12 (on the right to be heard), Article 4 (on appropriate measures aimed at implementing the rights recognised in the CRC), Article 5 (on direction and guidance consistent with the developing capacities of the child); (2) articles on civil liberties and rights – Article 15 (on the right to association and peaceful assembly), Articles 7 and 8 (on birth registration and the right to identity), Articles 13 and 17 (on freedom of expression and access to information), Article 16 (on

22 The right to non-discrimination does not simply result in prohibiting all forms of discrimination, but also requires appropriate proactive measures to effectively ensure that all children have an equal opportunity to exercise their rights under the CRC.

privacy, honour and reputation); (3) articles on family environment and alternative care - Article 20 (on the right to special protection and assistance for children deprived of a family environment), Article 9 (on separation from parents), Articles 3(3) and 25 (concerning compliance with standards by institutions, services and other entities responsible for the care or protection of children, as well as periodic inspections in medical institutions), Article 18 (concerning parental responsibility); (4) Article 27 concerning an adequate standard of living; (5) articles concerning disability and health - Article 23 (concerning children with disabilities), Articles 24 and 33 (concerning health and the abuse of drugs and other harmful psychoactive substances); (6) articles concerning educational, recreational and cultural activities - Article 28 (on the right to education), Article 29 (on the purposes of education), Article 31 (on the right to rest, play and leisure); (7) articles on violence against children and special protective measures - Articles 19 and 39 (on freedom from all forms of violence), Articles 34-36 (on sexual exploitation, trafficking and other exploitation), Article 32 (on child labour), Articles 37 and 40 (on juvenile justice) and Article 38 (on the involvement of children in armed conflict).

The Committee called on States Parties to strengthen international engagement, cooperation, and mutual assistance in the prevention and protection of children in street situations. Such cooperation should include the identifying problems, sharing rights-based practices that have proven effective, research, procedures, monitoring and capacity building. This requires the involvement of States Parties, as well as United Nations bodies and agencies, regional organisations, civil society, children, the private sector and professional groups. Only the consolidation of efforts can result in getting children out of street situations or ensuring that their rights are respected when they choose to remain on the street.

6. Protecting the child from the dangers of the digital world considering General comment No. 25

The progress of civilisation associated with the development of digital technologies and communication techniques – apart from its undoubtedly positive aspects – has become a source of many risks, including protecting children from all forms of violence. General comment No. 25 (2021) on children’s rights in relation to the digital environment serve to minimise the negative impact of digital technologies and communication techniques on children’s lives. The digital environment can contain hurtful information based on gender stereotypes, discrimination, racism, pornography, violence, exploitation, misinformative content and information that encourages children to engage in illegal or harmful activities. The digital environment can introduce new forms of violence against children, fostering situations in which they experience violence and/or are forced to harm themselves or others.

Guiding principles in determining the measures necessary to protect the child and guarantee the fulfilment of the child’s rights in the digital environment are 4

principles: non-discrimination; the best interests of the child; the right to life, survival and development; and respect for the views of the child. States Parties should ensure that in all actions related to the provision, regulation, design, management and use of the digital environment for the child, the child's best interests are prioritised, which include, *inter alia*, the right to seek, obtain and impart information and protection from harm. When protecting children from the dangers of the digital world, the role of parents is irreplaceable. Therefore, States Parties should support parents and guardians in acquiring digital literacy and knowledge of the risks they generate to support children in making responsible use of the opportunities they present and to ensure that their rights are realised.

The possibility of realising children's rights and their protection in the digital environment requires a wide range of legislative, administrative and other measures, including preventive measures that are adequate and up-to-date to the existing risks. States Parties should implement measures to protect children from risks, including cyber-aggression, digital sexual exploitation, and online abuse; ensure the prosecution of such crimes; and provide remedies and support for child victims. They should also respond promptly to the needs of disadvantaged or vulnerable children by providing child-friendly information translated into minority languages, where necessary. The development of legislation, policy and practice should be underpinned by permanently collected and updated data and research findings to understand the impact of the digital environment on children's lives and development, assess its effects on the realisation of their rights, and evaluate the effectiveness of State interventions.

Measures to ensure that effective child protection mechanisms are in place in the digital environment must consider respect for the other rights of the child in all places where they have access to the opportunities provided by digital technologies and communication techniques, that is, in the home, educational establishments, internet cafés, youth cultural centres, libraries and health and foster care settings.

States Parties should designate a state body with the authority to coordinate policies, guidelines and programmes related to the protection of children's rights implemented by various central government bodies and at different levels of government. Moreover, they should ensure that the reference terms for national human rights institutions cover children's rights in the digital environment. Where independent oversight bodies exist to monitor activities related to the digital environment, national human rights institutions should work closely with them to effectively exercise their powers relating to children's rights. Authorities with supervisory powers related to children's rights, particularly those with jurisdiction over health and safety, data protection and consumer rights, education, advertising and marketing, should ensure that complaints can be lodged, dealt with expeditiously, and that appropriate remedies are available in the event of violations or breaches of children's rights in the digital environment.

Awareness is a prerequisite for the realisation and protection of children's rights. Considering this, States Parties should disseminate information and conduct public campaigns on children's rights in the digital environment, with a particular

focus on activities that directly or indirectly affect children. They should create an enabling environment for educational programmes for children, parents, caregivers, the general public, and policymakers raising awareness of children's rights in the context of the opportunities and risks associated with digital products and services. Such programmes should include information on how children can use digital products and services, develop their digital skills and abilities, protect their privacy and prevent victimisation, recognise children who have been harmed and respond appropriately.

States Parties should engage as wide a range of actors as possible to do so and work with civil society, involving various community groups and NGOs working in the field of children's rights, as well as those dealing with the digital environment, in the development, implementation, monitoring and evaluation of laws, policies, plans and programmes on children's rights.

It is particularly important to ensure that businesses comply with their obligations to prevent the use of the digital environment in ways that lead to or contribute to the violation or abuse of children's rights. States Parties should require all businesses that affect children's rights in the digital environment to implement regulatory frameworks, industry codes, and service regulations that meet the highest standards of ethics, privacy and security in the design, engineering, development, operation, distribution and marketing of their products and services. In addition, States Parties should introduce, monitor and enforce legislation to prevent violations of the right to protection from violence and prosecute, try and remedy violations that occur in the digital environment.

The interests of businesses must not prevail over those of the children. Therefore, States Parties should legally prohibit the profiling and targeting of personalised content to children for commercial purposes based on a digital record of their actual or presumed characteristics, including group or aggregate data, targeting personalised content on an associative basis, or profiling based on presumed interests. Activities that use neuromarketing, emotional analysis, immersive/native advertising and advertising in virtual and augmented reality environments to promote products, applications and services should be prohibited when interacting with children. States Parties should ensure that automated information search and filtering, including recommendation systems, do not structure content in a manner that gives preference to paid commercial or politically motivated content over children's free choice or at the expense of the right to information.

States Parties should ensure that appropriate and effective judicial and non-judicial mechanisms to protect children's rights against violations in the digital environment are widely known and available to all children and their representatives. Mechanisms for filing lawsuits, complaints and notifications should be free of charge, secure, confidential, flexible, child-friendly, and accessible in forms adapted for people with special needs. In addition, States Parties should also ensure that collective complaints can be filed, including bringing class action lawsuits and initiating legal proceedings in cases of public interest, as well as obtaining legal or other appropriate assistance

for children whose rights have been violated in or through the digital environment. Considering the above, law enforcement officers, prosecutors and judges should receive specialised training in the area of child rights violations related specifically to the digital environment.

A digital environment creates a space for virtual freedom. Considering this, States Parties should provide children with information and training opportunities to effectively exercise their right to express their thoughts, opinions and political views, in particular, to safely create and share digital content while respecting the rights and dignity of others and without violating laws, including those on incitement to hatred and violence. When expressing political and other views in the digital environment, children may face criticism, hostility, threats or punishment. States Parties should protect children from cyberaggression, threats, censorship, data breaches and digital surveillance. Moreover, they should also ensure that children are not punished for their religion or beliefs expressed in the digital environment.

States Parties should implement legislative, administrative and other measures to ensure that the privacy of the child is respected and protected by all organisations and in all environments that process their data. Activities involving automated data processing, profiling, behavioural targeting, mandatory identity verification requiring data, information filtering and mass surveillance are routine practices in digital space. These types of activities can lead to arbitrary or unlawful interference with a child's right to privacy and, consequently, can have negative effects on children that persist into later stages of their lives. States Parties should ensure that children and their parents or guardians can easily access stored data; rectify inaccurate or outdated data; and delete data held by public authorities, individuals or other entities, unlawfully or unnecessarily. It is the responsibility of States Parties to inform children, parents, guardians and the public about the importance of a child's right to privacy and how their own practices may threaten this right.

The role of parents in their children's upbringing, including the responsible use of digital technologies and communication techniques, is highlighted, which poses challenges for updating their knowledge and acquiring or improving digital competence. States Parties should ensure that parents and caregivers, in developing the knowledge, capacities and skills necessary to help their children interact with the digital environment, have opportunities to acquire digital literacy, learn how technology can work for the rights of the child, recognise disadvantaged children, and respond appropriately. As part of the support and guidance provided to parents and caregivers in the digital environment, States Parties should also promote awareness among parents and caregivers of the need to respect children's growing autonomy and protect their privacy, aligned with their developing capacities.

Sexual behaviour is particularly dangerous in the digital environment, primarily because of the ease of contact and information transfer. Sex offenders may use digital technologies to solicit children for sexual purposes and engage in the online sexual exploitation of children through, inter alia, live video streaming, the production and distribution of sexually related materials and sexual extortion. States Parties should

protect children from sexual exploitation and other forms of sexual exploitation and ensure the protection of their rights with regard to digital work and related earning opportunities. Simultaneously, sexually oriented materials prepared by the children themselves, which they possess and/or share with their own consent, and solely for their own use, should not be criminalised. Furthermore, child-friendly channels should be created to allow children to safely seek advice and assistance regarding self-created sexual content.

The sexual violence present in the digital environment has already been highlighted by the Committee on the Rights of the Child in its General comment No. 13 (2011), indicating the sexual exploitation of children through the depiction of audio and video images of children made available primarily on the Internet and to the process of producing, creating, permitting the taking, distributing, showing, possessing or advertising of immoral photographs, images, and videos depicting children in an abusive manner. Further, the Committee highlighted that children: 1) as recipients of information, they may be exposed to potentially or realistically harmful advertising, spam, sponsored material, personal information and content of a violent, violent, hate-filled, stereotyped, racist, pornographic, unwanted and/or misleading nature; 2) as subjects, they may be taunted, harassed or stalked, and/or coerced, tricked or encouraged to meet strangers offline, to engage in sexual activities and/or to provide information of a personal nature; 3) as participants, they may engage in taunting and harassment of others, play games that negatively affect their mental development, create and download inappropriate sexually-oriented material, provide misleading information and advice and/or download illegal material, gamble, hack computers, extort money and/or engage in terrorism.

To counter such dangers, States Parties should ensure that digital literacy is taught in schools as part of the core curriculum, commencing at the pre-school level. Curricula should include knowledge and skills to safely use a wide range of digital tools and resources, as well as critical literacy, guidance on how to find trustworthy sources of information, how to recognise misinformation and other forms of biased or false content, including sexual and reproductive health issues, human rights, including children's rights in the digital environment, and available forms of support and remedies. It is extremely important to disseminate knowledge to children about the possible negative effects of exposure to content, contact, behaviour, and contractual risks, including cyber aggression, trafficking, sexual exploitation and abuse, and other forms of violence, as well as coping strategies to reduce harm, protect their own and others' personal data, and build children's social and emotional skills and resilience to all types of harm.

States Parties should ensure that children have safe, private and beneficial access to the digital environment, and protect them from violence, exploitation and abuse.

7. Summary

Children's rights are not derived from any concept or theory of education, nor are they a political or worldview concept. They are part of human rights, and only some of these rights are exercised by children as they mature and according to their capacity to discern and assess their situation. This means that they accrue to the child from the beginning of his or her existence –that is, from the moment of conception. The most important factor is the right to life, which conditions the enjoyment of all others. Hence, any action against human life from the moment of conception constitutes the most brutal form of violence against a child and leads to his or her annihilation.

This observation is particularly relevant considering the content of the general comments cited above, in which the Committee on the Rights of the Child encourages States Parties to adopt a holistic approach to guarantee the right of the child to be protected from all forms of violence. Of particular relevance are the sections of the general comments that refer to human sexuality, obliging States Parties to implement educational measures to prevent unplanned teenage pregnancies and provide special care when they become pregnant. Related to this is the need to take action to equalise the status of women/girls and men/boys. Therefore, it is not without reason that an important part of the general comments refers to women and girls, emphasising the need for States Parties to adopt measures to overcome gender and age discrimination.

Thus, from the content of the general comments relating to the protection of children from all forms of violence in the broadest sense emerges a concern to ensure optimum living and developmental conditions for children, which is dictated by concern for children and the functioning of society as a whole. Accordingly, the Committee on the Rights of the Child points to new sources of danger generated by digital technologies, recommending that measures be implemented to bring order to virtual reality and subject it to tighter institutionalised control aimed at eliminating or at least reducing the possibility of children being harmed by digital technologies and communication techniques.

The recommendations arising from general comments must be viewed considering local conditions and the capacities of States Parties. Although the desire to ensure the protection of children from violence is not subject to any contestation, the manner in which this objective is pursued requires a particularly balanced action on the part of States Parties. In doing so, the cultural diversity that determines the identity of peoples and nations must not be destroyed in favour of cultural colonisation.

Although the provisions of the CRC are general in nature, their application in practice requires that the individual situation of the child be considered and that it is in his or her best interests. Knowledge of CRC should be disseminated to the public and children, and all those working with or for children need training on how

to implement CRC, including the best interests and how to have conversations with children.

To disseminate the concept of the rights of the child, the Committee on the Rights of the Child requests States Parties to disseminate the content of the recommendations arising from the general comments by all possible means, including the use of digital technologies. It aims to reach the widest possible audience - parliaments, governments, public administrations, parents and guardians, specialised organisations, local communities, the private sector, civil society, and above all, children. Such training should be conducted regularly as an ongoing process and not as a one-off event. Training must cover child rights and their practical applications. Professionals and others should be able to guide parents and other caregivers on positive parenting and the importance of avoiding maltreatment during upbringing. Adults who are in contact with a child should be able to recognise possible issues from the child's behaviour or what the child says, without the child explicitly asking for help. This is highly relevant for school and preschool teachers who meet the child every day, as well as health professionals, social workers, and police, but also for adults in the family or neighbourhood who meet the child in an informal setting. Identification requires that all who come into contact with children are aware of the risk factors and indicators of all forms of violence, have received guidance on how to interpret such indicators, and have the necessary knowledge, willingness and ability to take appropriate action for the benefit of children.

To make this a reality, it is recommended to translate the content of the commentaries into foreign languages, sign language, Braille and adapt them for easy reading for children with disabilities and children with limited literacy. This requires making the content of commentaries available in a child-friendly version, organising workshops and seminars, and training all professionals working with and for children.

Bibliography

- Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989, Dz. U. 1991, No. 120, item 526.
- Dorosinski, R. (2016) *Komitet Praw Dziecka ONZ narusza postanowienia Konwencji*, Available at: <https://ordoiuris.pl/rodzina-i-malzenstwo/komitet-praw-dziecka-onz-narusza-postanowienia-konwencji> (Accessed: 30 August 2023).
- General comment No. 13 (2011): The right of the child to freedom from all forms of violence, 18 April 2011, Available at: <https://www.refworld.org/docid/4e6da4922.html> (Accessed: 30 August 2023).
- General comment No. 21 (2017) on children in street situations, 21 June 2017, Available at: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-21-2017-children-street> (Accessed: 30 August 2023).
- General comment No. 25 (2021) on children's rights in relations to the digital environment, 2 March 2021, Available at: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-25-2021-childrens-rights-relation> (Accessed: 30 August 2023).
- Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women / general comment No. 18 of the Committee on the Rights of the Child (2019) on harmful practices, 8 May 2019, Available at: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/joint-general-recommendation-no-31-committee> (Accessed: 30 August 2023).
- Jaros, P. (2015) 'Definicja dziecka', in: Stadniczeńko, S.L. (ed.), *Konwencja o Prawach Dziecka. Wybór zagadnień (artykuły i komentarze)*, Warsaw.
- Jasionek, S. (2004) *Prawa człowieka*, Cracow.
- Kahn, P. W. (2016) *Making the Case: The Art of the Judicial Opinion*, New Haven.
- Leszczyński, J. (2015) 'Opinia prawna jako przedstawienie wiedzy o prawie', in: Król, M. (ed.), *Opinie prawne w praktyce*, Warsaw.
- Lis W. (2022) 'Prawo do życia zarodków powstałych w wyniku medycznie wspomaganey prokreacji', in: W. Lis (ed.), *Prawo do życia*, Warsaw.
- Order of the Supreme Court of 24 November 2016, II CA 1/16, LEX nr 2216088.
- Sandberg K. (2018) 'Children's Right to Protection under the CRC', in: Falch-Eriksen, A., Backe-Hansen, E. (eds.), *Human Rights in Child Protection. Implications for Professional Practice and Policy*, Oslo.
- Smyczyński T. (1999) 'Pojęcie dziecka i jego podmiotowości', in: *Konwencja o prawach dziecka. Analiza i wykładnia*, Poznań.
- Stadniczeńko D. (2019) *Komitet Praw Dziecka OZN. Rola i znaczenie. Komentarze*, Lublin.
- Zirk-Sadowski M. (2002) 'Uczestniczenie prawników w kulturze', *"Państwo i Prawo"*, No. 9.