



Making Children's Rights Work:

Country Profiles
on Cambodia,
Indonesia,
Sri Lanka,
Timor Leste,
and Viet Nam



BUREAU
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DES DROITS DES ENFANTS

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International Bureau for Children's Rights (IBCR)

Created in 1994 and based in Montreal, Canada, the International Bureau for Children's Rights (IBCR) is an international non-governmental organisation (INGO) with consultative status with the United Nations Economic and Social Council (ECOSOC). IBCR offers its expertise, particularly in the legal sector, to contribute to the protection and promotion of children's rights in conformity with the 1989 UN Convention on the Rights of the Child (CRC) and its Optional Protocols. The expertise of IBCR resides in the sharing of knowledge and good practices and in the development of tools and models to inspire implementation of children's rights. IBCR's expertise also lies in raising awareness about children's rights to persuade decision-makers to adopt laws and programs that more effectively respect the rights of the child.

In recent years, IBCR's main successes include its exceptional contribution to the elaboration of the Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime as well as their adoption by the United Nations Economic and Social Council (ECOSOC Res. 2005/20).

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Authors and acknowledgements

Jean-François Noël – Director General

Before being appointed Director General of the International Bureau for Children's Rights in December 2000, Jean-François Noël (B.A., LL.B., LL.M.) occupied the position of Legal Advisor for IBCR from 1997-2000. Mr. Noël is the author of a number of publications and conferences and has contributed to the work of national, international and intergovernmental expert committees on children's rights, criminal law and international law. He has recently played a key role in the adoption of the UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (ECOSOC Res. 2005/20), including as Rapporteur for the Intergovernmental Experts Group Meeting that developed the Guidelines. In addition to his work at IBCR, Mr. Noël has been lecturing at the Law Faculty of the University of Montreal since 1999.

Vrej Atabekian – Project Manager on Country Profiles

Vrej Atabekian is a human rights expert and researcher. In 1996-2001 he worked as a Human Rights Officer for the Organization for Security and Co-operation in Europe (OSCE) at the Office for Democratic Institutions and Human Rights (ODIHR), where he was responsible for human rights monitoring and reporting as well as several democratization projects. Prior to this he was working for a number of research institutions and for non-governmental organizations dealing with political analysis and democratization issues. Mr. Atabekian is a graduate of the Lancaster University in the UK and Columbia University in New York, and completed his doctoral studies at the Polish Academy of Sciences in Warsaw. He is an author of many publications on democratisation and human rights.

Chris Sidoti – Country Expert for Cambodia, Indonesia and Timor Leste

Chris Sidoti, a human rights lawyer, activist and teacher, is the current Director of the International Service for Human Rights in Geneva. He has been Australian Human Rights Commissioner (1995-2000), Australian Law Reform Commissioner (1992-1995) and the Australian Human Rights and Equal Opportunity Commission Foundation Director (1987-1992). He has also worked in non-government organisations, including for the Human Rights Council of Australia and the Australian Catholic Commission for Justice and Peace, and held many senior honorary positions in non-governmental organizations. Although based in Australia until 2003, he has worked extensively in the Asia Pacific region for many years. He is also a visiting professor at the University of Western Sydney and Griffith University in Australia.

Mark Hecht – Country Expert for Sri Lanka and Viet Nam

Mark Hecht is a lawyer specializing in international child law and human rights. He is currently a Visiting Assistant Professor and Access to Justice Chair at the University of Windsor and is both the co-founder and senior legal counsel for Beyond Borders: Ensuring Global Justice for Children. As the former Executive Director of the Human Rights International Documentation Network, he has been involved in a number of projects related to the rights of children including a program on juvenile justice, inquires on youth welfare, and an international child health initiative. Mr. Hecht is a member of the Executive Committee of the ECPAT International, the Canadian Government's Committee against the Commercial Sexual Exploitation of Children and Youth and the Patron Board of the Alliance for the Rights of Children. He holds a degree in law from the University of Windsor.

Interns and volunteers:

Daria Boyarchuk
Anabela Dias Cosme
Vannina Etori
Virginie Harvey
Anke Hoffmann
Katharina Istel
Julien Jahan
Leanne Johnny
Sarah Lusthaus
Guillaume Portmann
Élizabeth Sigouin
Ombeline Soulier Dugénie
Cathy Stirling

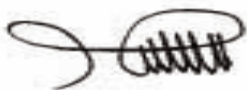
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Preface

It is my pleasure to present to you “Making Children’s Rights Work: Country Profiles on Cambodia, Indonesia, Sri Lanka, Timor Leste, and Viet Nam”. This publication is the outcome of IBCR’s ongoing project on Country Profiles on the Status of the CRC Implementation. The significance of this project stems from the fact that it is the first systematic country-focused comparative analysis of the status of children’s rights along the benchmarks of the CRC and its Optional Protocols covering all the States parties to the Convention. IBCR anticipates that this project and its outcomes will fill existing gaps in information and promote knowledge about the implementation of the Convention.

These reports are based on rich factual information, including data and statistics, collected by the IBCR country profiles team. The collected information was then enriched by the knowledge, experience and analysis of renowned international experts. The reports do not intend to cover all the aspects of children’s rights in the above-mentioned countries. Instead they focus on the key areas of interest that are presently given attention by international agencies (particularly the Committee on the Rights of the Child) and local child rights groups and experts. One of the strongest points of this publication is its balanced approach; while it is clearly critical of some of the practices in the area of children’s rights, it also highlights the achievements and commendable practices that have been developed in the same area by Governments, and international and local organizations. By identifying and describing both the challenges and best practices of selected countries, IBCR hopes this work will uncover strategies for facilitating the successful implementation of the Convention in other countries of the region and the rest of the world.

This publication is being distributed broadly and is intended for Governments, legislatures, judiciary, civil society organizations, international agencies and independent experts and researchers. It is also written in a language that is accessible to general public. IBCR plans to continue its research on the status of the CRC implementation and will be coming out with new publications from other countries and parts of the world. As a result, we will have a series of publications on the status of children's rights worldwide. The ultimate goal of this endeavour is not only to bolster the international understating of children's rights, but also to disseminate knowledge about the CRC and assist Governments in its implementation.



Ambassador Moushira Khattab
IBCR Board Member
Vice Chair of UN Committee on the Rights of the Child
Secretary General of the National Council for Childhood
and Motherhood in Egypt

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Introduction

The project on Country Profiles on the Status of the CRC Implementation is one of the core IBCR program activities. It involves analysis and reporting on the status of implementation of the *Convention on the Rights of the Child* (CRC) and its *Optional Protocols*. It particularly aims to detect the existing challenges and gaps, highlight the progress made and identify the commendable practices that are developed in the area of children's rights by States parties. The overall objective is to fill the disparities in monitoring children's rights at the national and regional level, and facilitate the implementation of the CRC and its Optional Protocols globally by providing Governments with successful international practices that could be implemented in their respective countries. The project has been attracting much interest on the part of Canadian agencies as well as international partners worldwide. Within the framework of this project, in August 2005 IBCR received funding from the Canadian International Development Agency (CIDA) to conduct a pilot study of selected South-East Asian countries. That group included countries where CIDA conducts its own projects and where the IBCR's country profiles could provide added value for CIDA's activities, namely Cambodia, Indonesia, Sri Lanka, Timor Leste, and Viet Nam.

Methodologically, the project was designed in a manner that combines various techniques and means of collecting, sorting, processing and interpreting information pertaining to children's rights in the selected countries. The research strategy also involved a series of verification techniques and interviews to augment the information from the analytical part. As designed, the implementation of this project commenced with collecting preliminary information and data, and developing the first draft country reports. At this stage the IBCR's country profile team identified certain problematic areas and concerns pertaining to children in the above-mentioned countries. Some areas of research in relation to children's rights lacked up-to-date statistical data as well as an analysis of general trends pertaining to the status of children. Available information about national monitoring mechanisms was also not always sufficient. Nevertheless, the collected information and its analysis enabled the Bureau to create a fairly accurate general comprehension of the status of children and their rights in the selected countries of South-East Asia.

In order to validate the preliminary results of the IBCR's in-house research and analysis, the Bureau sent its Program Manager to some of the selected countries on a fact-finding mission. The fact-finding mission

confirmed certain preliminary assumptions of IBCR's research, while also identifying various areas of concern and negligence. More specifically, the mission revealed that the implementation of the CRC is to a certain extent fragmented and inconsistent. Often there was a lack of synergy with the benchmarks of the Convention and no streamlining of activities of various organizations. Such fragmentation meant that in the visited countries of South-East Asia some areas of children's rights received sufficient coverage while others were neglected for other reasons. Also, certain disparities – both in terms of CRC implementation and research – existed within and between the countries.

In general, the societies of South-East Asia have various degrees of deep-rooted tradition of love and care for their children. However, these virtues do not always translate into respect towards children and their rights. When the IBCR raised this concern with the local experts, the latter often referred to the uniqueness of their traditional understanding of respect, something which they held was different from Westerners' concept of respect for children. Local officials and experts were further inviting international organizations to explore their local traditions and see to what extent they can be adapted and streamlined with the implementation of the CRC. The IBCR is generally inclined to support this approach of translating the CRC into the language of local cultures and traditions, because this can greatly facilitate the understanding of the international norms and standards pertaining to children's rights and make them more appealing and comprehensible for local officials.

Altogether the mission not only resulted in enrichment of the draft reports through the addition of factual information, but also confirmed the need for the proposed project, by revealing the breaches pertaining to the implementation of the CRC and the Committee's recommendations. All the relevant observations and information were transferred to IBCR's country experts, who further developed the draft country reports and brought them to final form. The reports highlighted main areas of concern regarding children's well-being and rights. These were *inter alia* respect for the rights and dignity of the child, including minority children, the right to expression as well as the right to be heard, problems with excessive child labour and child trafficking etc.. The reports also revealed that there is currently a dearth of knowledge about good practices and techniques for implementing and rendering the CRC operational, as well as insufficient coordination and collaboration between and sometimes within the countries. While analyzing the collected information, the reports confirm the initial assumption that despite challenges, shortcomings and

even apparent violations of children's rights, still in all the selected countries of South-East Asia there are certain good practices that need further study and dissemination within countries, and both at the regional and international level. These and other results of the project are detailed in the relevant country reports that are hereby presented to you.

In parallel with the South-East Asian component, IBCR has been continuing its in-house research on the status of the implementation of the CRC in other countries of Asia and Africa. The IBCR will be publishing its draft reports on all other Asian countries in electronic format on its website at www.ibcr.org. In the meantime, the Bureau will continue seeking partners and funding in order to accelerate the pace of the implementation of the project covering other regions of the world. Ultimately, this project aims at covering all the States parties to the CRC and presenting a global country-based analysis of the situation of children's rights along the benchmarks of the Convention.



Children's Rights Profile on Cambodia



1.0 Introduction

1.1 Country Overview

Cambodia is located in South East Asia and is a member of the Association of South East Asian Nations. Phnom Penh is the capital city. It is predominantly a Buddhist society with a Khmer ethnic majority population and a large number of ethnic minorities. Minorities include ethnic Chinese and Vietnamese in cities and lowland areas, and highland tribal peoples in the remote provinces in the northeast of the country, close to the Vietnamese border. Cambodia is a largely rural society, although since 1990 it has had one of the highest rates of urbanization.¹ The majority of families live in subsistence farming villages and communities. Per capita income is very low, restricting the ability of families to care for their children and meet their health and educational needs.

The people of Cambodia still endure the legacy of four decades of war that resulted in millions of deaths, extreme poverty, gross violations of human rights, and great hardship. By the early 1990s, the country had little infrastructure, a ruined economy, extremely low rates of literacy, school enrolment, and attendance, and very poor health and medical services. Its transition from war to peace has been difficult and remains incomplete. The international community intervened in the early 1990s and accepted a major share of responsibility for rebuilding Cambodia. Over the following ten years it allocated thousands of international experts and billions of dollars to the task. In 2003 Cambodia was still receiving USD 500 million in official development assistance, representing 12% of its gross domestic product.

There has been great improvement in many areas over the past decade. As later sections of this profile will discuss, educational achievement has increased, health has improved, and the economy is growing. The country has a stable Government and is at peace. Nonetheless Cambodia remains one of the poorest countries in Asia and among the poorest in the world. It is ranked at 130 on the United Nations Development Program's Human Development Index.² It suffers from rampant corruption that infects almost every part of economic and political life. Its Government is increasingly unaccountable and authoritarian. For the majority of Cambodians mere survival remains a daily struggle.

1 "State of the World's Children 2006", UNICEF, 2006, table 6 pg 118

2 "World Development Report 2005", UNDP, 2005, pg 221, accessible on-line at <http://www.undp.org/reports/global/2005> (last accessed: 19 April 2006)

1.2 The Children of Cambodia

As a traditional society Cambodia has a strong family base. Families provide extended networks of mutual obligation. Households, especially in rural areas, are usually multi-generational and grandparents play significant roles in the daily lives and development of children. Within these traditional structures children are not seen as having rights but responsibilities. Their level of effective participation in decision-making is low. However they play important parts in the family's economy, usually contributing to the family through framework or, as adolescents, low-paid labour. They face challenges at each stage of development:

- as newborns, the challenge to survive, when infant and under-five mortality rates are particularly high
- as young children, the challenge to thrive, when nutrition is problematic, and health, medical and early childhood services are inadequate in number, distribution and quality
- as children of primary school age, the challenge to acquire a basic education and;
- as teenagers, the challenge to make the transition, through education, training and work, to a larger role in the family, the economy and the broader society.

1.3 Facts at a Glance³

- In a population of 13.8 million, 1.8 million (13%) are under the age of 5 years and 6.25 million (45%) are under the age of 18 years.
- Only 19% of the population lives in cities; 81% of the population is rural.
- Cambodia is very poor: per capita gross national income is USD 320. 34% of the population earns less than a dollar a day.
- Child mortality rates are very high: 97 per 1000 die before the age of 1 year, 141 per 1000 die before the age of 5 years; each year 60,000 children under the age of 5, 41,000 of them infants, die.
- 13% of children under 5 are severely underweight; 45% of children under 5 are moderately or severely underweight.
- The maternal mortality rate is 450 per 100,000 births.
- Life expectancy at birth is 57 years.
- The primary school net enrolment rate is 96% for boys and 91% for girls.

3 Statistics are drawn from CAMInfo 2004 and the National Institute of Statistics *Cambodian Demographic and Health Survey* 2000, 2001. CAMInfo is a CD Rom, produced by UNICEF Cambodia, of the most recent and most reliable statistics, including the *Cambodian Demographic and Health Survey*, the Ministry of Education information system, and other sources.

- The secondary school net enrolment rate is 30% for boys and 19% for girls.

The Kingdom of Cambodia is a constitutional monarchy under the 1993 Constitution adopted in accordance with the Paris Peace Accord. The Constitution provides for a democratic parliamentary form of government. The election of 1998 was the first in which all the major political forces took part. The election of 2003 resulted in a 12 month parliamentary deadlock that was resolved with the formation of a coalition Government in July 2004. Although the Constitution provides for democratic elections and for a system of checks and balances, the fairness of elections has been challenged by national and international observers and the majority Cambodian People's Party under Prime Minister Hun Sen has dominated Cambodian politics for almost 25 years.

The 1993 Constitution includes specific provisions for the protection of human rights, including "the rights of the children as stipulated in the Convention on Children".⁴ Enforcement mechanisms are weak, however. A Cambodian National Council for Children was established in 1995 to promote, coordinate, and oversee implementation of the Convention but it has few powers and limited resources. It is composed of representatives of Government ministries. Cambodia does not have an independent national human rights institution responsible either for human rights generally or for children's rights specifically. In its *Concluding Observations* in 2000, the Committee on the Rights of the Child recommended that the role of the Cambodian National Council for Children be strengthened, that it be given more substantial resources, and that it collaborate more closely with non-government organisations.⁵ It also recommended the establishment of an independent mechanism, such as an Ombudsman for Children, to monitor implementation of the Convention, to receive complaints from children and provide remedies, and to provide and promote education on children's rights.⁶ The United Nations Commission on Human Rights and the Human Rights Committee established under the International Covenant on Civil and Political Rights have both recommended the establishment of an independent national human rights institution to cover all human rights.⁷ The Cambodian Government has taken no action on these recommendations.

4 Constitution Article 48

5 "Concluding Observations: Cambodia 24th Session", Committee on the Rights of the Child, 3 June 2000, CRC/C/15/Add.128, para 12

6 para 14, *ibid*

7 Resolution of the UN Commission on Human Rights, first passed on 25 April 2001 (E/CN.4/Res/2001/82): Human Rights Committee July 1999 in CCPR/C/79/Add.108

2.0 International Conventions and Treaties

Date of admission to UN: 14 December 1955

Treaty	Status	Signature date	Ratification or accession date	Reporting record
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Accession		15.10.1992	Initial report 17.01.2003
Optional Protocol to the Convention Against Torture and Cruel, Inhuman or Degrading Treatment or Punishment	No Action			
International Covenant on Civil and Political Rights	Accession	17.10.1980	26.05.1992	Initial report 23.09.199
Optional Protocol to the International Covenant on Civil and Political Rights	No Action			
Second Optional Protocol to the International Covenant on Civil and Political Rights	No Action			
Convention on the Elimination of All Forms of Discrimination against Women	Ratification	17.10.1980	15.10.1992	Combined initial, second and third reports October 2003
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women	Signature only	11.11.2001		
International Convention on the Elimination of All Forms of Racial Discrimination	Ratification	12.04.1966	28.11.1983	
International Covenant on Economic, Social and Cultural Rights	Accession	17.10.1980	26.05.1992	
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	Signature only	27.09.2004		
Convention on the Rights of the Child	Accession		15.10.1992	Initial report 24.6.1998
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	Ratification	27.06.2000	16.07.2004	

Continue



Treaty	Status	Signature date	Ratification or accession date	Reporting record
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	Ratification	27.06.2000	30.05.2002	
Final Protocol to the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others	Signature	2.09.2004		
Convention on Consent to Marriage, Minimum Age of Marriage and Registration of Marriages	No action			
ILO 138 (minimum age for employment)	Ratification		23.08.1999	
ILO 182 (worst forms of child labour)	No action			

There are no reservations to Cambodia's ratification of any of these treaties.⁸

3.0 Children's Rights Review

3.1 General Overview

On 15 October 1992, Cambodia ratified the Convention on the Rights of the Child without reservation. Its initial report, due in 1994, was filed on 24 June 1998⁹ and was subject to examination by the Committee on the Rights of the Child in May 2000. The Committee issued its *Concluding Observations* on 2 June 2000.¹⁰ Cambodia has not reported to the Committee since then.

The Committee made several positive comments on aspects of Cambodia's implementation of the Convention, including the incorporation of children's rights in the 1993 Constitution, the agreement with the Office of the High Commissioner for Human Rights for technical assistance and the measures to address child labour.¹¹ It noted that Cambodia faced many difficulties in implementing the Convention, in particular, the

⁸ Although the Government had signed both the International Covenants in 1980, it lodged instruments of accession, rather than ratification, when it became a party in 1992.

⁹ "Initial Report of State Parties: Cambodia", Committee on the Rights of the Child, 24 June 1998, CRC/C/11/Add.16

¹⁰ "Concluding Observations: Cambodia 24th Session", Committee on the Rights of the Child, 3 June 2000, CRC/C/15/Add.128

¹¹ para 3 to 7, *ibid*

legacy of more than 20 years of genocide, armed conflict, political instability, isolation and its very difficult socio-economic situation.¹² It recommended that “the general principles of the Convention (i.e. non-discrimination (art. 2), the best interests of the child (art. 3), the right to life, survival and development (art. 6) and the respect for the views of the child (art. 12)) be included in all relevant legislation affecting children and taken into account in all administrative and judicial decisions, as well as in all policies and programmes related to children”.¹³ It drew attention to 28 issues of concern and made specific recommendations on each.

There has been “limited progress” in incorporating the basic principles of the Convention in Cambodian legislation.¹⁴ The principles are reflected in new draft laws on inter-country adoption and juvenile justice, in some articles of the draft civil code and implicitly in a draft law on domestic violence but these laws have not been enacted.¹⁵ The juvenile justice law has been in draft form awaiting consideration for some years now.

Cambodia has not responded to the Committee’s recommendations. However, this profile will refer to the Committee’s concerns and recommendations in its *Concluding Observations* and discuss the changes in Cambodia in the six years since they were issued.

3.2 Application of the CRC’s Non-Discrimination Principles

The 1993 Constitution prohibits discrimination based on race, colour, sex, language, religion, political opinion, national origin and social, property or other status.¹⁶ However, in its *Concluding Observations* in 2000 the Committee on the Rights of the Child expressed “its concern at the existing patterns of discrimination on the grounds of gender, ethnic origin, HIV/AIDS status and disability. In particular, concern is expressed that the State party’s Constitution refers only to the rights of Khmer citizens”.¹⁷ It had particular concerns about girls’ access to education, discrimination against street children and the rights of children of minority groups, especially ethnic Vietnamese.¹⁸

12 para 8, *ibid*

13 “Concluding Observations: Cambodia 24th Session”, Committee on the Rights of the Child, 3 June 2000, CRC/C/15/Add.128, para 26

14 UNICEF Cambodia response to IBCR questionnaire, April 2006

15 UNICEF Cambodia response to IBCR questionnaire, April 2006

16 Constitution Article 31

17 “Concluding Observations: Cambodia 24th Session”, Committee on the Rights of the Child, 3 June 2000, CRC/C/15/Add.128, para 27

18 para 28, *ibid*

Girl children experience greater disadvantage than boy children on almost all human rights indicators, although the disparity is less than it was when the Committee on the Rights of the Child made its comments on 2000. Although their under-five mortality rate is lower than boys',¹⁹ they are more likely to be stunted and underweight.²⁰ In the school system, girls' participation begins at about the same level as boys' participation but then decreases in comparison with boys' participation as education proceeds.²¹ The inequality is greater in more remote provinces and districts.

Children of ethnic minority groups also experience discrimination, especially in more remote provinces and districts where tribal minority peoples are concentrated. In its *Concluding Observations*, the Committee on the Rights of the Child expressed its concerns that the Constitution of Cambodia referred only to the rights of Khmer citizens and that the *Law of Nationality* of 1996 might lead to discrimination against children who are not Khmer and leave stateless these children born in Cambodia but belonging to minority groups.²² There has been no change in the law since then.

The remote provinces lack crucial health and housing infrastructure and Government action is not sufficient.²³ School participation rates are much lower in the remote areas and schools provide little or no schooling in minority languages, unless private ethnic associations set up classes of that kind.²⁴ The net primary school enrolment rate is 54.3% in the most remote province with a concentration of tribal peoples, compared with the highest provincial rate of 94.5%. The net lower secondary school enrolment rate is 4.6% in the most remote province with a concentration of tribal peoples, compared with 42.7% in Phnom Penh.²⁵ In a number of provinces along the Vietnamese border there is simply no adequate education for minority children. The Cambodian Government is aware of the shortages and reported that it has built schools in particular in areas inhab-

19 Girls' rate is 110.1 per 1000 live births and boys' rate is 132.8 per 1000: "Cambodia Demographic and Health Survey 2000", National Institute of Statistics, 2001, pg 127

20 "Cambodia Demographic and Health Survey 2000", National Institute of Statistics, 2001, pg 174

21 "Education for All National Plan 2003-2015", Royal Government of Cambodia, pg 82

22 "Concluding Observations: Cambodia 24th Session", Committee on the Rights of the Child, 3 June 2000, CRC/C/15/Add.128, para 31

23 In Mondulakiri and Ratanakiri provinces in 2000, there were 229 deaths per 1000 births and in the rest of Cambodia 122 deaths per 1000 births: "Cambodia", Cambodia Corps Inc., 2005, accessible on-line at <http://www.cambodiacorps.org> (last accessed: April 19, 2006)

24 "Towards a region fit for children: An atlas for the Sixth East Asia and Pacific Ministerial Consultation", UNICEF, 2003 p 55; "Report for the May 15-June 2, 2000 session - Cambodia", NGO Committee on the Rights of the Child; Chey Chap, In The and Anne Thomas Bilingual education in Cambodia 2003 pg 1-2,4

25 CAMInfo 2004

ited by ethnic minorities²⁶. The number of primary schools in Monduliri almost doubled between 1999 and 2003 and primary school enrolment increased by nearly 100%. The dropout rate is still significant and few minority children finished their primary education. Similarly to the Khmer majority, girls of ethnic minorities are less likely to enrol than boys.²⁷

The Cambodian Constitution provides specific recognition of the responsibility of the Government to support people with disabilities.²⁸ The Draft Education Law provides for the right to education of children with disabilities.²⁹ It has been estimated that, particularly as a result of war and the continuing presence of landmines in many parts of the country, Cambodia has one of the highest rates of disability in the world and that 20% of that large disabled population are children.³⁰ Children with disabilities often have higher health care needs than other children and so are especially affected by inadequate health and medical services. Their education needs are often not met. One survey in a limited area in 2001 found that more than half the local population of children with disabilities did not attend school.³¹ Those with physical disabilities are most easily integrated into the school system but there is only limited support for a minority of children with hearing or sight disabilities and none at all for children with intellectual disabilities.³²

3.3 Application of the CRC's Best Interest of the Child Principles

The best interests principle is not stated explicitly in Cambodian law although it can be presumed to be incorporated through the general provision on the rights of children in the 1993 Constitution.³³ Cambodia's only report to the Committee on the Rights of the Child includes a brief section on the best interests principle but in fact discusses issues of education, health, and care and protection.³⁴

26 "Initial Report of State Parties: Cambodia", Committee on the Rights of the Child, 24 June 1998, CRC/C/11/Add.16 para 29

27 "Cambodia, Improving Access to Education for Children", Refugees International, 15 November 2004, accessible on-line at <http://www.refugeesinternational.org/content/article/detail/4390/> (last accessed: 19 April 2006)

28 Constitution Article 74

29 Draft Education Law Article 12

30 "Concluding Observations: Cambodia 24th Session", Committee on the Rights of the Child, 3 June 2000, CRC/C/15/Add.128; "Disability Action Council Education policy for children with disabilities in Cambodia: a concept paper," prepared by the Ministry of Education, Youth and Sport, April 2001, pg 5

31 "Disability Action Council Education policy for children with disabilities in Cambodia: a concept paper," prepared by the Ministry of Education, Youth and Sport, April 2001, pg 5

32 pg 11, *ibid*

33 Constitution Article 48

34 "Initial Report of State Parties: Cambodia", Committee on the Rights of the Child, 24 June 1998, CRC/C/11/Add.16, para 33 and 34

Reviewing the report, the Committee on the Rights of the Child recommended that the best interests principle be “included in all relevant legislation affecting children and taken into account in all administrative and judicial decisions, as well as in all policies and programmes related to children”.³⁵ This recommendation has not been implemented. There have been efforts to develop a child-friendly justice system but they have “just begun ... [W]hile there are good intentions, [UNICEF Cambodia does] not feel that the best interests principle is rigorously included or systematically referred to in all Government actions”.³⁶

3.4 Application of the CRC's Child Development Principles

In all areas concerning child development the Cambodian Government faces the task of promoting the full enjoyment of human rights in a poor country. The poverty is evident in the indicators relating to each article in the Convention on the Rights of the Child.

For infants and young children, **survival** is the paramount concern. Cambodia has high rates of infant and under-five mortality. Around one child in seven dies before the age of 5 years. Cambodia ranks 130 on the Human Development Index but 166 on the table of under-five mortality rates.³⁷ In spite of a major national and international effort, there seems to have been no significant improvement in infant and under-five mortality rates over the past decade. Children who survive are often underweight to a moderate or severe degree – almost half the children under 5.³⁸ The Committee on the Rights of the Child commented on these facts in 2000 and recommended “a multisectoral approach recognising the critical role of illiteracy, lack of clean water supplies and food insecurity in the current pattern of childhood illnesses” and “measures ... for establishing an efficient primary health-care sector, including strategies to encourage care-seeking for childhood illnesses”.³⁹ The approach in the recommendation has been reflected in Government plans and policies since then but the reduction in the infant mortality rate has been small.

35 “Concluding Observations: Cambodia 24th Session”, Committee on the Rights of the Child, 3 June 2000, CRC/C/15/Add.128, para 26

36 UNICEF Cambodia response to IBCR questionnaire, April 2006

37 “World Development Report 2005”, Human Development Index in the United Nations Development Program, table 1; mortality rates in the “State of the World's Children 2006”, UNICEF, 2006, table 1

38 “State of the World's Children 2006”, UNICEF, 2006, table 2

39 “Concluding Observations: Cambodia 24th Session”, Committee on the Rights of the Child, 3 June 2000, CRC/C/15/Add.128, para 45

The Committee on the Rights of the Child expressed concern at “children’s limited access to health services, due notably to the shortage of medical and public health personnel and the insufficient number of primary health centres, in particular in rural areas. Concern was also expressed at the high cost of health care and medicines, which lead families into debt and greater poverty.”⁴⁰ It also drew attention to adolescents’ limited access to reproductive and sexual health education and services and to mental health services.⁴¹

Certainly antenatal care is one issue still needing to be addressed. More than two thirds of the women in rural areas have no access to professional antenatal care and more than half no access to any antenatal care at all.⁴² Only 14% of women who have given birth have professional postpartum care and only 42% have any postpartum care at all within two days of birth.⁴³ This lack of care and lack of professional assistance at childbirth result in Cambodia’s high maternal mortality rate, 450 per 100,000 births.⁴⁴

In other areas there has been good progress: higher child immunisation rates, lower measles rates, and the elimination of polio in Cambodia.⁴⁵ When the Committee on the Rights of the Child examined Cambodia’s report in 2000, Cambodia had the fastest growing rate of HIV/AIDS infection in the region.⁴⁶ Cambodia has now successfully reversed a decade of increasing rates of HIV infection in women seeking antenatal care. Although HIV/AIDS contributes to 3% of all childhood deaths, projections to 2010 show large declines in the number of children living with HIV/AIDS, the number of new infections among children and the number of deaths of children.⁴⁷ The Ministry of Health has a major health education program for adults and children about basic health and sanitation issues.⁴⁸

40 “Concluding Observations: Cambodia 24th Session”, Committee on the Rights of the Child, 3 June 2000, CRC/C/15/Add.128, para 50

41 para 52, *ibid*

42 “Cambodia Demographic and Health Survey 2000”, National Institute of Statistics, 2001, pg 133

43 pg 144, *ibid*

44 “State of the World’s Children 2006”, UNICEF, 2006, table 8

45 Data supporting these conclusions are found in CAMInfo 2004

46 “Concluding Observations: Cambodia 24th Session”, Committee on the Rights of the Child, 3 June 2000, CRC/C/15/Add.128, para 46

47 “Analysis of the Slow Progress in Child Mortality Reduction Benchmark for the Consultative Group Cambodia”, Ministry of Health Final Draft Report, 2004, pg 15

48 UNICEF Cambodia response to IBCR questionnaire, April 2006

The Draft Education Law provides a legal right to nine years of basic **schooling** free of charge in public schools.⁴⁹ However it does not make primary schooling compulsory, as required by the Convention on the Rights of the Child. The Committee on the Rights of the Child noted this deficiency and recommended effective measures to make primary education free and compulsory for all.⁵⁰ The Committee also made recommendations to “increase the enrolment rates and decrease drop-out and repetition rates; to increase access to schools, in particular for poor children, girls, children belonging to minority groups and children living in remote areas. The Committee further recommends that the State party continue to take measures to improve its education system by increasing budget allocations for the education sector; providing training to upgrade teachers’ skills; making the school curricula more relevant to children’s needs; expanding opportunities for vocational training and non-formal education, including at pre-school and secondary levels; and establishing an evaluation system to measure the effectiveness of the education system.”⁵¹ Progress has been apparent but slow.

Cambodia has very high rates of illiteracy and low rates of school participation but here there has been substantial improvement over the past decade.⁵² Between 1998-99 and 2003-04, primary school enrolments increased by 23%, by 500,000 students, and the net enrolment rate from 78% to 90%.⁵³ Lower secondary school enrolments more than doubled, with an additional 230,000 students, and the net enrolment rate increased by half.⁵⁴ With the assistance of UNICEF Cambodia, the Ministry of Education is promoting a “child-friendly school” initiative in six provinces to improve the quality of education and of the learning environment as a means to encourage better enrolment, participation and retention rates.⁵⁵

Cambodia lacks an effective early childhood education system to prepare children for schooling. Although the number of pre-schools increased by more than 50% between 1998-99 and 2003-04, they were still able to cater to only 20% of 3 to 5 year olds.⁵⁶ Studies in Cambodia

49 Draft Education Law Article 5

50 “Concluding Observations: Cambodia 24th Session”, Committee on the Rights of the Child, 3 June 2000, CRC/C/15/Add.128, para 54

51 para 55, *ibid*

52 All data in this paragraph are drawn from CAMInfo 2004

53 CAMInfo 2004

54 *ibid*

55 UNICEF Cambodia response to IBCR questionnaire, April 2006

56 “Situation of Education in 2003-2004”, Ministry of Education, Youth and Sport, Department of Planning, pg 1

have found that pre-school attendance significantly reduces primary school drop-out and repetition rates and improves primary school performance.⁵⁷

The large increases in primary enrolments do not necessarily translate into equal increases in educational achievement. In fact, school attendance averages only 65% of enrolment and 25% of enrolled students do not attend primary school regularly.⁵⁸ Drop-out and repetition rates are extremely high.⁵⁹ Only 55% of the students who begin Grade 1 complete Grade 6.⁶⁰ However, 83% of students who complete Grade 6 advance to lower secondary school.⁶¹ Many factors contribute to the low attainment of the majority of students, including poverty, in the context of the direct and indirect costs of education, insufficient qualified teachers, incomplete and poor quality schools and distance from schools. Primary education is officially free but hidden costs, for example, fees for essential additional tutoring, and indirect costs, such as uniforms and books, remain and operate as effective deterrents to enrolment and retention.⁶² New schools are being built and more teachers trained but to meet the present shortfall more teachers and schools are working double shifts and students' hours of schooling are being reduced.⁶³ In many cases, schools operate two shifts a day of 4 hours each to be able to provide education for all children; in urban areas 60 to 80 pupils sometimes share one classroom.⁶⁴

While the progression rate from Grade 6 to Grade 7 is good, still the net enrolment rate in lower secondary school is only a little over 20% of children in the relevant age bracket.⁶⁵ Less than a third of students who start Grade 1 go on to complete their basic schooling to the end of year 9.⁶⁶ Even fewer students complete upper secondary school. In 2003-04, 60% of Grade 9 graduates entered upper secondary school but the net enrolment in upper secondary schools is only 8% of the relevant age bracket.⁶⁷

57 "Basic education in Cambodia: some preliminary figures", World Bank, June 2004

58 "Education Strategic Plan 2004-2008", Ministry for Education, Youth and Sport, September 2004, pg 8

59 UNICEF Cambodia response to IBCR questionnaire, April 2006

60 CAMInfo 2004

61 *ibid*

62 UNICEF Cambodia response to IBCR questionnaire, April 2006

63 "Education for All National Plan 2003-15", Royal Government of Cambodia, pg 80

64 "Report for the May 15-June 2, 2000 session - Cambodia", NGO Committee on the Rights of the Child

65 CAMInfo 2004

66 *ibid*

67 *ibid*

A child's care needs begin before birth and continue throughout childhood. A child is entitled to the **care of her or his family** except where the child's best interests make some alternative arrangement desirable. Families are the basis of Cambodian society. The 1993 Constitution provides, "Parents have the duty to maintain their children and bring them up to become good citizens".⁶⁸ The greatest problem for families in discharging this duty is poverty. Indeed poverty undermines the capacity of most parents to care for their children as they would wish. Per capita gross national income in Cambodia is USD 320 a year, less than a dollar a day.⁶⁹ 34% of Cambodians live in extreme poverty on less than one US dollar a day.⁷⁰

In traditional Cambodian society parents who could not care for their children would place them informally with other family members or neighbours or, in the case of boys, with monks in the local temple. These informal arrangements persist today for most children not in parental care but they are unregulated and unmonitored. There are reports that some of these children are exploited as domestic and farm labourers or trafficked or sexually abused.⁷¹

The formal alternative care system in Cambodia is small. There are only 159 residential care facilities.⁷² The care providers are required to be registered and the relevant Government Ministry established a monitoring team in 2001 but the supervision is not rigorous. The Committee on the Rights of the Child noted that children in the formal system tend to be placed in children's homes or child welfare centres.⁷³ It recommended measures to promote the family as the best environment for the child and to empower parents to take care of their children.⁷⁴ It also recommended the development of policies and regulations regarding children's institutions and of alternative forms of care, such as foster families.⁷⁵ The Committee also noted that legislation governing domestic and intercountry adoptions did not meet international standards and that existing adoption procedures were usually not respected and were reported to be marked by corruption and abuse and illegality.⁷⁶

68 Constitution Article 47

69 "State of the World's Children 2006", UNICEF, 2006, table 1

70 table 7, *ibid*

71 "The National Survey of Providers of Alternative Care for Children in Cambodia: Analytical Report", Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation, 2002 pg 9

72 pg 1, *ibid*

73 "Concluding Observations: Cambodia 24th Session", Committee on the Rights of the Child, 3 June 2000, CRC/C/15/Add.128, para 37

74 para 38, *ibid*

75 para 39, *ibid*

76 para 40, *ibid*

Few of these issues have been addressed in the intervening six years. The Ministry of Social Affairs has finalised a policy on alternative care and is working on four sets of minimum standards for residential care, foster care, group home care and pagoda based care.⁷⁷ Little real change in practice is yet apparent.

Because of poverty, poor health standards and poor educational attainment, children in Cambodia experience a high risk of **abuse, exploitation or neglect**. Traditional attitudes and practices in Cambodia were tolerant of the use of physical violence on children. The Committee on the Rights of the Child expressed concern “at the insufficient awareness of the scope and harmful consequences of mistreatment and abuse of children, including sexual abuse, both within and outside the family; the insufficient resources, both financial and human, to prevent and combat child abuse; and the insufficient care and rehabilitation measures, including facilities available for child victims of abuse”.⁷⁸ It identified traditional attitudes as contributing to this and recommended a series of measures to address the violations, including care and rehabilitation centres, education and law enforcement.⁷⁹ The Cambodian Government has taken a number of initiatives to address child abuse and neglect but the problems remain endemic and many children continue to experience violence as a fact of daily life.⁸⁰

For young children, the risk relates primarily to violence and neglect. They are also at risk of being trafficked for purposes of intercountry adoption. For older children, the risks are exploitation as child labourers and for sexual purposes and trafficking. Many children in Cambodia work to support their families. They may work as farm labourers on family or neighbours’ farms or in the informal economy because of the severe poverty of many farming families.⁸¹ Others, however, are forced into the cities, where the risk of severe exploitation and abuse is higher, through voluntary or forced migration and trafficking.⁸²

Many children in cities live or work on the streets. Some live with their families, others with other children. They are forced onto the streets

77 UNICEF Cambodia response to IBCR questionnaire, April 2006

78 “Concluding Observations: Cambodia 24th Session”, Committee on the Rights of the Child, 3 June 2000, CRC/C/15/Add.128, para 42

79 para 43, *ibid*

80 UNICEF Cambodia response to IBCR questionnaire, April 2006

81 “Needs Assessment and Situation Analysis of Migration and Trafficking from Svay Rieng Province, Cambodia, to Vietnam for Begging”, International Organisation for Migration, 2004

82 *ibid*

because of family breakdown, violence and abuse, poverty, being orphaned, abandonment and trafficking. Street work includes begging, prostitution, hawking and provision of labour.⁸³

The Committee on the Rights of the Child expressed concern about the large number of **working children**, including in the informal sector, in agriculture and in the family context and at the inefficient enforcement of existing labour laws. It recommended enforcement of the law on the minimum age for employment, better labour inspection and monitoring and prosecution of violators.⁸⁴ This has proved to be very difficult because of the endemic poverty in Cambodia. The Ministry of Labour and Vocational Training is strengthening the labour inspection system as one response.⁸⁵ However, this only deals with the formal employment sector and does not address the most widespread practices of child labour.

Trafficking of children has become a particular issue in Cambodia. The Committee on the Rights of the Child also expressed its concern at “widespread phenomena of child prostitution and the sale and trafficking of children; the inadequate enforcement of the new legislation on these issues; and the shortage of trained people and institutions to provide rehabilitation”.⁸⁶ In spite of national plans to prevent and eliminate trafficking in children, the problem remains significant.

Cambodia is a country of origin, transit and destination for trafficked children but there are no reliable statistics on the numbers of children trafficked in and through Cambodia. Cambodian children are trafficked into Thailand for sex work and street begging.⁸⁷ Vietnamese children are trafficked into Cambodia for prostitution. It is estimated that 78% of prostitutes in Cambodia under the age of 16 years are Vietnamese girls.⁸⁸ Cambodia has responded to the problem of trafficking with program and policy initiatives. It has a Five Year Plan against Trafficking and Sexual

83 “Helping Street Children to Come off the Streets of Phnom Penh: Report of a workshop organised by the Municipality of Phnom Penh’s Urban Poverty Reduction Project”, UN Habitat and Mith Samlanh Friends, Mith Samlanh Friends, 2003.

84 “Concluding Observations: Cambodia 24th Session”, Committee on the Rights of the Child, 3 June 2000, CRC/C/15/Add.128, para 61 and 62

85 UNICEF Cambodia response to IBCR questionnaire, April 2006

86 “Concluding Observations: Cambodia 24th Session”, Committee on the Rights of the Child, 3 June 2000, CRC/C/15/Add.128, para 63

87 “Victims of Trafficking and Violence Protection Act of 2000: Trafficking in Persons Report, Office to Monitor and Combat Trafficking in Persons”, US State Department, June 2004

88 “Summary Five Year Plan against Trafficking and Sexual Exploitation of Children (2000-2004)”, Cambodian National Council for Children, March 2000

Exploitation of Children, cooperative arrangements with neighbouring States and rehabilitation and support programs for victims. It has sought to strengthen law enforcement through the establishment of a Department of Anti Human Trafficking and Juvenile Protection with a focus on sex crimes and through police training.⁸⁹ Arrests and prosecutions have increased and there has been “tremendous progress on the law enforcement side”.⁹⁰

One difficulty in assessing and addressing trafficking and indeed other forms of exploitation, abuse and neglect of children is the absence of an effective **birth registration** system. Birth registration confers legal identity. It establishes the existence of a child and facilitates monitoring of the child's development, whereabouts and wellbeing. Without it a child is exposed to increased risks of exploitation, trafficking and abuse and loses her or his equal status before the law. Cambodia's civil registration records were largely destroyed during the war years and are now being re-built by the Government. The Committee on the Rights of the Child recommended in 2000 that birth registration be made compulsory and Cambodia introduced the new law the same year.⁹¹ The law requires registration within 30 days of birth. However, distance, time and expense are deterrents, especially in rural and remote areas. Registration rates remain low, around 22 per cent.⁹²

3.5 Application of the CRC's Child Participation Principles

In discussing children's right to participate Cambodia's report to the Committee on the Rights of the Child referred to the provision in the 1993 Constitution guaranteeing freedom of expression to all citizens.⁹³ It described implementation of the right in terms of children answering the teacher's questions in class, being asked their views in divorce proceedings, having access to a radio and television program and speaking at seminars on the rights of the child. However, it also acknowledges, “children cannot exercise this right fully because custom does not allow them to challenge decisions taken by adults or to be present at discussions between adults. Some school-teachers and other adults will not listen to children's views simply because of their age.”⁹⁴

89 UNICEF Cambodia response to IBCR questionnaire, April 2006

90 UNICEF Cambodia response to IBCR questionnaire, April 2006

91 Sub-decree on Civil Status 2000

92 “Cambodia Demographic and Health Survey 2000”, National Institute of Statistics, 2001, p 150; Another survey found a rate of about 30 per cent: “Birth registration in Cambodia: An analysis of Kompong Speu and Svay Rieng Provinces”, Child Rights Foundation, 2003, pg 10

93 Constitution Article 47

94 “Initial Report of State Parties: Cambodia”, Committee on the Rights of the Child, 24 June 1998, CRC/C/11/Add.16 para 37

The Committee expressed concern at “the insufficiency of the measures undertaken by the State party to promote the participation of children in the family, the community, the schools and other social institutions” and recommended legislative reform and public awareness programs.⁹⁵

Children are certainly significant participants in economic and social life in Cambodia. In a country with an overwhelmingly young population their presence is felt throughout the community. They are forced, through family poverty, to be active in the informal and rural economies. However, their actual influence over events and even in decisions affecting themselves is small. That is apparent from the limited examples of child participation in the State report. Some non-government organisations, such as Mith Samlanh Friends, are the major promoters of child participation, seeking their views on their needs and aspirations, assisting them to take more control of their lives and encouraging them to play roles in organisational decision making.⁹⁶ So far as the Government is concerned there have been few initiatives to encourage the participation of children and they have been isolated.⁹⁷

3.6 Application of Other Principles Worthy of Note

The Committee on the Rights of the Child recommended strongly the establishment of a separate juvenile justice law and system that conform to Cambodia's international obligations and international standards. It also recommended the development of a comprehensive policy and program for children in conflict with the law and to prevent juvenile delinquency.⁹⁸

Six years later Cambodia still has no juvenile justice legislation or system. Although the law requires some consideration to be given to children, children are subject to the same law and the same system as adults. A draft law on juvenile justice was completed some years ago but it has not been enacted. There are no juvenile courts and no juvenile prisons and the Government does not intend establishing them.⁹⁹ The law does not contain any minimum age of criminal responsibility. Interim arrangements continue to apply whereby children under 12 years may not be held in pre-trial detention, children aged between 13 and 18 may not be held

95 “Concluding Observations: Cambodia 24th Session”, Committee on the Rights of the Child, 3 June 2000, CRC/C/15/Add.128, para 33 and 34

96 See <http://www.streetfriends.org>

97 UNICEF Cambodia response to IBCR questionnaire, April 2006

98 “Concluding Observations: Cambodia 24th Session”, Committee on the Rights of the Child, 3 June 2000, CRC/C/15/Add.128, para 66

99 UNICEF Cambodia response to IBCR questionnaire, April 2006

in pre-trial detention for longer than one month and children under 18 years have criminal penalties halved.¹⁰⁰ It seems that the Ministry of Justice has set administratively a minimum age of 13 years for criminal prosecution.¹⁰¹

Children are imprisoned in adult prisons. The numbers in prison have been increasing since 1998. In 2004 252 children were in prison.¹⁰² Prison conditions are extremely poor and marked by over-crowding. Although the Ministry of Justice has made administrative orders that children are to be housed in separate cells from adult prisons, this order is not always enforced and children often share cells with adults.¹⁰³ They have little or no access to fresh air and exercise and no rehabilitation, education or training. Most importantly they are at constant risk of sexual assault.

The Ministries of Justice and of Social Affairs are developing inter-agency protocols for juvenile justice and are training judges, prosecutors and lawyers in children's rights in relation to juvenile justice. The Ministry of Justice is developing a diversion program for children. The Ministry of Social Affairs has also recently launched a program of support for children in adult prisons through non-formal education and vocational training.¹⁰⁴ However there are no plans for a separate system of juvenile courts and detention centres.

4.0 Overall Assessment

Cambodia is a poor country, one of the poorest in Asia. It also has a long recent history of international and civil war that finally ended completely less than a decade ago. In many ways children still experience the legacy of the decades of war in their daily lives, even though most of them were born after the worst of the violence was over. Many come from fractured families. Many of their parents were children during the Khmer Rouge period and had no experience of being parented and of ordinary family life. Many of them have no father or no mother. Many have suffered personally as a result of the continuing presence of active landmines in large parts of the country. Most of them experience the poverty of

100 "Initial Report of State Parties: Cambodia", Committee on the Rights of the Child, 24 June 1998, CRC/C/11/Add.16 para 25

101 "Gang Rape and Indecent Assault: Crimes in the Community", LICADHO, 2001, p 42
102 *ibid*

103 "Children in the Cambodian Justice System, Sim Souyong", Pa Ngoun Kea and Lay Puthera, Protection of Juvenile Justice, 2003, pg 1

104 UNICEF Cambodia response to IBCR questionnaire, April 2006

Cambodia. This is the context in which the status of children's rights must be assessed.

There is no doubt that Cambodia has made significant progress over the past decade in many areas of children's rights. Increased educational participation and attainment is perhaps the most obvious. Increased immunisation is having an impact in reducing the incidence of preventable childhood disease. Polio has been eliminated. Laws have been drafted in many areas of relevance to children, though too few of them have actually been enacted. The Government has developed and adopted multi-year planning strategies, for example relating to poverty reduction, the achievement of the Millennium Development Goals, socio-economic development, education, health, HIV/AIDS, trafficking and sexual exploitation of children, and nutrition.

Nonetheless the challenges remain enormous. The most significant challenge is still the reduction in infant and child mortality rates. In spite of many years of effort these rates seem stuck around the same high levels. The deaths of one in seven children before the age of 5 years have a profound impact not only on the families most directly affected but the society as a whole. There can be no doubt that reducing this suffering is the highest child rights priority.

While acknowledging the difficult context of Cambodia the assessment of the status of children must still ask why things are not better. Cambodia has received very high levels of international assistance for a decade. It was under direct international administration for a short time and following that it has continued to receive large amounts of international aid and international expertise. Why has it not done better?

One question must be whether the Government is serious about addressing children's rights. In performing its reporting obligations under the Convention on the Rights of the Child and the two Optional Protocols Cambodia has not demonstrated any seriousness. Its initial report was presented in 1998, four years late, and no other report has been presented since then. Its initial report under the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography is also well overdue.

Cambodia has a governance problem which includes a corruption problem. These problems are undermining the capacity of the Government and the country to address the serious deficiencies in Cambodian children's enjoyment of their rights. They result in the diversion of much needed funds from meeting children's needs to other purposes. They lead to governmental paralysis, for example, in securing the passage of necessary legislation or the development of programs. They restrict the ability of non-government organisations and other actors to act independently to support children and respond to their needs. It is difficult to see how the situation of children in Cambodia can improve until the governance problem is addressed with the seriousness and determination required.



Children's Rights Profile on Indonesia



1.0 Introduction

1.1 Country Overview

Indonesia is located in South East Asia and is a member of the Association of South East Asian Nations. Jakarta is the capital city. It is a 5000 km long string of 17,500 islands, of which 6000 are inhabited, stretching along the equator. It has the fourth largest population in the world, an estimated 220 million people¹. More than half the population lives on the island of Java, one of the most densely populated areas on earth. Almost half the population now lives in cities.²

Indonesia was a Dutch colony until it won its independence in a short anti-colonial war immediately after World War II. It began its independent life as a democracy but its political system became increasingly authoritarian under the eccentric leadership of its founding President Sukarno. The military wrested de facto control and then formal political power from Sukarno from September 1965 and inaugurated the New Order regime under President Suharto until he and it were deposed by a popular uprising in May 1998. Each period of major transition – from colony to independent State in the 1940s, from the civilian leader Sukarno to Suharto's military New Order in 1965-66 and from the New Order to democratic civilian leaders in 1998 – has been accompanied by significant violence. One of the triumphs of the post New Order period has been the peaceful and orderly transition of power from president to president on three occasions.

Indonesia is the world's largest Muslim nation and Islamic belief and practice are very strong. However, it is not an Islamic State, although the Constitution provides that "the State shall be based upon the belief in the One and Only God"³. Almost 90 per cent of the population is Muslim, around 9 per cent Christian and the remainder Hindu and Buddhist.⁴ There has been a strong tradition of religious tolerance since independence, despite the Indonesian Government recognising only five religions until 1999, giving no status in particular to traditional Chinese

1 "State of the World's Children 2006", UNICEF, 2006, table 1. Other estimates put the population as high as 240 million people

2 ibid

3 Constitution Article 29.1

4 "Supplementary report to the second periodic report of Indonesia", CRC/C/65/Add.23, submitted to the Committee on the Rights of the Child 2 January 2004, table 4, pg 9

5 The recognised religions were described as Islam, Protestantism, Catholicism, Hinduism and Buddhism. The passage of the Human Rights Law 39/1999 provided for full freedom of religion and belief and effectively abolished the restriction to five recognised religions.

Confucian and Taoist beliefs.⁵ Indonesian Islam is traditionally moderate and tolerant. Sharia law is not imposed except partially in the province of Aceh. However, more extreme variants of Islam have surfaced at various periods, especially periods of instability. Since 2001 the Indonesian group *Jemaah Islamiya* has been identified as a major jihadist terrorist network responsible for bombings of civilian targets in Jakarta and Bali and violence against Christian minorities in other parts of the country. It has successfully exploited economic and other disputes to frame them as religious conflicts. The majority of Indonesian Muslims repudiate Islamist violence.

The great ethnic diversity of Indonesia's population is reflected in the national motto, Unity in Diversity. Indonesia has over 1000 ethnic groups and sub-groups, more than 100 of which have more than 1000 members.⁶ The Javanese and the Sundanese (from West Java) are the largest by far and together constitute around half the population. The Javanese have long dominated politics, the bureaucracy and the military. Population pressures on Java led to an official policy promoting transmigration that resulted in the movement of millions of people over several decades from Java to the outer islands. These Javanese transmigrants were resented by the local ethnic groups among whom they moved. Transmigration was abandoned as an official policy after the overthrow of the New Order regime and since 1998 large numbers of transmigrants have returned to Java.

There is also a large Chinese minority that is politically marginalised but economically powerful, controlling business and commerce in many parts of the country. They have been the victims of communal conflict on several occasions, most notably during the transitional periods of 1965-66 and 1998-99.

Indonesia's quarter century occupation of East Timor was certainly a disaster for the East Timorese but it was also a disaster for Indonesia, earning it moral and legal condemnation. It complicated its relations with other States and became an enormous drain on its domestic resources. The withdrawal enabled Indonesia to concentrate on its own development and the wellbeing of its people. Unfortunately those responsible for the human rights abuses in East Timor continue to enjoy impunity for their actions.

6 "Supplementary report to the second periodic report of Indonesia", Committee on the Rights of the Child, CRC/C/65/Add.23, submitted to the Committee on the Rights of the Child 2 January 2004 table 2, pg 5-6

The gravest setback to Indonesia since the reform process began was the tsunami of 26 December 2004. The tsunami caused great loss of life, perhaps as many as 180,000 people, and devastated large areas, especially the province of Aceh. The economic costs were enormous. International assistance was increased greatly as a result but the consequences of the tsunami will be felt for a long time.

1.2 The Children of Indonesia

About a third of Indonesia's population is under 18, a low proportion compared with many developing countries but, with Indonesia's enormous population, this is over 75 million children.⁷ In the Islamic culture of Indonesia, children are seen as gifts from God and children's rights are considered God-given.⁸ They are always spoken of in terms of the future: the future of the nation and the family, the transmitters of tradition and culture from the generation before them to the one after them.⁹ This does not mean, however, that the culture is child focused. Indonesian culture and society are very traditional. Family structures are strong and roles within families rigid. Children are expected to be respectful and obedient. They have little part in family decision-making but many are expected to contribute to family sustenance directly or indirectly.

On the other hand, Indonesian students, both at the university and high school levels, have played critical roles at turning points in Indonesian history, most recently in the uprising that overthrew Suharto and the New Order. They have prestige as a small educated elite in a society in which education is valued but still basic for most people. The roles played by students in earlier generations give status to each new generation of students. The great majority of Indonesian children, however, do not enjoy this status and these privileges. For them life is a struggle with few advantages.

1.3 Facts at a Glance¹⁰

- In a population of 220.1 million, 21.5 million (9.8%) are under the age of 5 years and 75.7 million (34.4%) are under the age of 18 years.
- 47% of the population lives in cities; 53% of the population is still rural. The rate of urbanisation seems to be slowing but has still averaged 4.4% over the past 15 years.

7 "State of the World's Children 2006", UNICEF, 2006, table 6

8 "Presidential Decree on the National Plan of Action for the Eradication of Commercial Sexual Exploitation of Children", 87/20002, 2002 para (a)

9 para (b), *ibid*; See also, for example, "National Plan of Action for the Eradication of Commercial Sexual Exploitation of Children", Minister for Women's Empowerment "Foreword", 2002

10 Statistics are drawn from "State of the World's Children 2006", UNICEF, 2006

- Per capita gross national income is USD 1140. Only 8% of the population earns less than a dollar a day. These relatively good figures should not disguise the reality of poverty for large numbers of people, however.
- Child mortality rates are high but not extreme in comparison with other developing countries: 30 per 1000 die before the age of 1 year, 38 per 1000 die before the age of 5; the large population means that this translates into large numbers of deaths: 171,000 children under the age of 5, 135,000 of them infants, die each year.
- 9% of children under 5 are severely underweight; 28% of children under 5 are moderately or severely underweight.
- The maternal mortality rate is 230 per 100,000 births.
- Life expectancy at birth is 67 years.
- The primary school net enrolment rate is 93% for boys and 92% for girls.
- The secondary school net enrolment rate is 54% for both boys and girls.

The Republic of Indonesia has a democratic system of government in law and in fact, since the overthrow of Suharto's New Order regime in 1998. A series of amendments to the 1945 independence Constitution in 1999, 2000, 2001 and 2002 has transformed it into a democratic Constitution that incorporates recognition of human rights. Indonesia has free and fair elections for the President and the legislative chambers at national level and for governors and legislatures at provincial level. The President, who is head of Government as well as head of State, is elected by a national popular ballot under the amendments to the Constitution.¹¹ Since 1998 there have been three orderly transitions. The present President, Susilo Bambang Yudhyono, has strong public support and, at this stage, is widely regarded as the most effective president since the fall of the New Order.

The Constitution now includes specific provisions for the protection of human rights.¹² They include recognition that every child "shall have the right to live, to grow and to develop, and shall have the right to protection from violence and discrimination".¹³ Children are also entitled to all the other rights which are said to be the entitlement of "every person". These rights include the standard list of civil, cultural, economic, political and social rights, even though they are not formulated in the language of the international instruments.

11 Constitution Article 6A

12 Constitution Chapter XA, Articles 28 to 28J, introduced by the Second Amendment to the Constitution in 2000

13 Constitution Article 28B.2

A law of 1999 made broad provision for the recognition and protection of human rights in anticipation of the 2000 constitutional amendments.¹⁴ Those provisions are more specific than the constitutional provisions and have continuing validity. The same law transformed Indonesia's National Commission on Human Rights into a statutory body with guaranteed independence and broad powers and functions.¹⁵ The Commission had been established in 1994 by presidential decree but, when transformed, it became a fully independent national human rights institution that complies with the relevant international standards, the Paris Principles.

Indonesia also has a Law on Child Protection and a National Commission on Child Protection to promote it.¹⁶ This Commission is principally an educational and promotional body. Unlike the Commission on Human Rights, it does not have powers of investigation, reporting and recommendation. The Law incorporates the basic principles of the Convention on the Rights of the Child, including the non-discrimination, best interests and participation principles. There is also a National Action Committee on the Elimination of the Worst Forms of Child Labour which is responsible for monitoring and evaluating implementation of the National Plan of Action for the Elimination of the Worst Forms of Child Labour but has no broader investigative responsibilities or powers.¹⁷

The Convention on the Rights of the Child itself has not been incorporated into Indonesian law. Unlike other human rights treaties ratified by Indonesia, it was ratified pursuant to a presidential decree rather than through an act of Parliament.¹⁸ Under Indonesian law a presidential decree is an inferior legal instrument that can be overruled by five higher-status legal instruments.¹⁹ There has been domestic and international pressure to upgrade the status of the Convention to an act of the legislature.²⁰

14 Law on Human Rights, Law 39/1999

15 Komisi Nasional Hak Asasi Manusia or Komnas HAM

16 Law 23/2002 and Komisi Perlindungan Anak Indonesia

17 Komite Aksi Nasional Penghapusan Bentuk-bentuk Pekerjaan Terburuk Untuk Anak established by Presidential Decree 12/2001. The National Action Plan was adopted by Presidential Decree 59/2002.

18 Presidential Decree 36/1990

19 MPR Decree III/2000 on Source of Law and the Hierarchy of Law and Regulations, 18 August 2000

20 "Comments on the First Periodic Report of the Government of Indonesia to the Committee on the Rights of the Child", Indonesian NGO Coalition for CRC Monitoring, undated; "Committee on the Rights of the Child Concluding Observations: Indonesia 24th Session", CRC/C/15/Add.223, 30 January 2004, para 14.

2.0 International Conventions and Treaties

Date of admission to UN: 28 September 1950

Treaty	Status	Signature Date	Ratification or accession date	Reporting record
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	Ratification	23.10.1985	28.10.1985	Initial Report 07.02.2001
Optional Protocol to the Convention Against Torture and Cruel, Inhuman or Degrading Treatment or Punishment	No Action			
International Covenant on Civil and Political Rights	Accession		23.02.2006	
Optional Protocol to the International Covenant on Civil and Political Rights	No Action			
Second Optional Protocol to the International Covenant on Civil and Political Rights	No Action			
Convention on the Elimination of All Forms of Discrimination against Women	Ratification	29.07.1990	13.09.1984	Combined Second and Third Periodic Reports 12.02.1997
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women	Signature only	28.02.2000		
International Convention on the Elimination of All Forms of Racial Discrimination	Accession		26.06.1999	
International Covenant on Economic, Social and Cultural Rights	Accession		23.02.2006	
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	Signature only	22.09.2004		
Convention on the Rights of the Child	Ratification	26.01.1990	05.09.1990	Initial Report 17.11.1992, Second Periodic Report 05.02.2002, Supplementary Report to the Second Periodic Report 02.01.2004

Continue



Treaty	Status	Signature Date	Ratification or accession date	Reporting record
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	Signature only	24.09.2001		
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	Signature only	24.09.2001		
Final Protocol to the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others	Signature only	25.09.2003		
Convention on Consent to Marriage, Minimum Age of Marriage and Registration of Marriages	No action			
ILO 138 (minimum age for employment)	Ratification		07.06.1999	
ILO 182 (worst forms of child labour)	Ratification		28.03.2000	

Indonesia's ratifications of CAT and CEDAW and its accession to CERD have a standard reservation to the effect that Indonesia does not accept compulsory referral of disputes under the treaty to the International Court of Justice. There is an additional reservation to all the articles of the Convention on the Rights of the Child to the effect that Indonesia does not accept any obligation under the treaty beyond those contained in its Constitution and does not accept any obligation to introduce any new right beyond those prescribed in its Constitution.

Indonesia's accessions to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights are subject to reservations in relation to the right to self determination. On 26 September 2005 the legislature passed laws to incorporate the covenants into domestic law.

3.0 Children's Rights Review

3.1 General Overview

Indonesia ratified the Convention on the Rights of the Child on 5 September 1990. It submitted its initial report on 17 November 1992, its Second Periodic Report on 5 February 2002 and a supplement to that on 2 January 2004.²¹ The Committee released its Concluding Observations on the Second Periodic Report on 30 January 2004.²² As only two years have passed since then, it is difficult to determine the extent to which Indonesia has acted on the Committee's recommendations.

The Committee welcomed the participatory process for the preparation of the report, including the involvement of non-government organisations and universities, and its publication and distribution.²³ It also welcomed Indonesia's ratification of other human rights treaties, the promotional activities it had undertaken in relation to the Convention on the Rights of the Child and its adoption of laws and plans and establishment of mechanisms for the protection and promotion of children's rights.²⁴ It noted that some of its previous recommendations had not been fully implemented.²⁵ It reiterated its previous recommendation relating to the withdrawal of reservations.²⁶ It also recommended reform of national and provincial law to incorporate the Convention into Indonesian law and to ensure conformity of all domestic laws with it.²⁷ It drew attention to 30 issues of concern and made specific recommendations on each. They will be referred to in the relevant sections of this profile.

The Indonesian Government was developing a National Plan of Action for Children in 2002-2003 but the Plan has not been adopted. There are sectoral plans, however, for example dealing with the worst forms of child labour and commercial sexual exploitation of children.²⁸

21 "Initial reports of States parties: Indonesia", Committee on the Rights of the Child, CRC/C/3/Add.10, 17 November 1992; "Second periodic reports of States parties due in 1997: Indonesia", Committee on the Rights of the Child, CRC/C/65/Add.23, 2 February 2002; "Supplementary report to the Second Periodic Report of Indonesia submitted to the Committee on the Rights of the Child", Committee on the Rights of the Child, CRC/C/65/Add.23, 2 January 2004. There was no First Periodic Report.

22 "Concluding Observations: Indonesia 24th Session", Committee on the Rights of the Child, CRC/C/15/Add.223, 30 January 2004.

23 para 3, *ibid*

24 para 4 to 7, *ibid*

25 para 11, *ibid*

26 para 12, *ibid*

27 para 14 & 15, *ibid*

28 These are discussed below.

3.2 Application of the CRC's Non-Discrimination Principles

The Constitution provides for freedom from “discriminative treatment based upon any grounds whatsoever”.²⁹ It also specifically recognises the child’s right to protection from discrimination.³⁰ These provisions are reiterated in specific laws dealing with human rights, child protection and education.³¹ The Committee on the Rights of the Child has recommended that Indonesia revise all legislation to guarantee the application of the non-discrimination principle in domestic laws and to adopt a comprehensive strategy to eliminate discrimination.³²

In spite of its culture and traditions Indonesian society does not appear to disadvantage girls in comparison with boys as much as is done in other traditional societies. Their primary and secondary school net enrolment and attendance rates are equal or close to equal.³³ Girls have lower drop out rates than boys, although these rates increase when they reach higher education.³⁴ Their illiteracy rates between ages 10 and 18 are generally lower than boys’ with the exception of older girls in rural areas.³⁵ Similarly to most countries, in Indonesia infant mortality is lower among girls than among boys.³⁶ Consistently with the traditional basis of Indonesian society girls are generally allowed less independence than boys and their life choices are more constrained, especially for girls in rural areas.

The ethnic diversity of Indonesia has produced national consciousness of issues of discrimination on the basis of ethnicity. This form of discrimination is prohibited but it is evident in the different positions of the various ethnic groups in society. Three types of disadvantage based on ethnicity are apparent in children’s experiences.

29 Constitution Article 28I.2

30 Constitution Article 28B.2

31 Law 39/1999 Articles 52 to 66, Law 23/2002 Article 2 and Law 20/2003 Article 4 respectively.

32 “Concluding Observations: Indonesia 24th Session”, Committee on the Rights of the Child, CRC/C/15/Add.223, 30 January 2004, para 31

33 “State of the World’s Children 2006”, UNICEF, 2006, table 5; “Supplementary report to the second periodic report of Indonesia” Committee on the Rights of the Child, CRC/C/65/Add.23, submitted to the Committee on the Rights of the Child 2 January 2004, table VII.1, pg 67

34 “Supplementary report to the second periodic report of Indonesia”, Committee on the Rights of the Child, CRC/C/65/Add.23, submitted to the Committee on the Rights of the Child 2 January 2004, table VII.2, pg 67

35 “Second periodic reports of States parties due in 1997: Indonesia” Committee on the Rights of the Child, CRC/C/65/Add.23, 2 February 2002, table VII.3, pg 68

36 para 269 and table 15, *ibid*

- Children from different ethnic groups may have different rates of education and other social participation because of differing cultural valuing of education and other activities. Children of groups who live in remote areas are also disadvantaged by a lack of services, such as schools and health care services.
- Children from the Chinese minority have experienced historical disadvantage in many aspects relating to the preservation of their cultural identity and religion. Laws formerly prevented religious worship in traditional non-Buddhist Chinese temples and shrines and prohibited the publication and public display of Chinese writing.³⁷ These laws have now been repealed following passage of the Human Rights Law in 1999.³⁸ However, children of Chinese ethnicity still experience discrimination through informal policies and practices.
- Indigenous and tribal children are especially disadvantaged due to their small numbers and remote locations. They are estimated to number less than one million and generally live in communities in the most isolated parts of Indonesia.¹⁴³ In general they have limited or no access to education, health and other social services. They are among the poorest groups in Indonesia.⁴⁰

Statistics relating to disability are unreliable and probably underestimate its incidence and impact.⁴¹ Officially the rate among children is 57.7 in 10,000.⁴² Children with a physical or mental disability have the right to care, education, training and special assistance to be able to live in dignity with self esteem and to exercise their rights.⁴³ They are also entitled to rehabilitation, social assistance and social welfare.⁴⁴ All people with disability are entitled to equal opportunities and the Government is responsible for realising their rights.⁴⁵ However provision of services is

37 para 619-620, *ibid*

38 Law 39/1999

39 "Second periodic reports of States parties due in 1997: Indonesia", Committee on the Rights of the Child, CRC/C/65/Add.23, 2 February 2002, para 624-625

40 para 627, *ibid*

41 "Concluding Observations: Indonesia 24th Session", Committee on the Rights of the Child, CRC/C/15/Add.223, 30 January 2004, para 54

42 "Second periodic reports of States parties due in 1997: Indonesia", Committee on the Rights of the Child, CRC/C/65/Add.23, 2 February 2002, para 248

43 Human Rights Law 39/1999 Article 54.

44 Law on Child Protection 23/2002 Article 12

45 Law concerning the Disabled 4/1997

inadequate and access to them is low.⁴⁶ The Government's response has been to encourage private and community sector engagement in addressing the difficulties encountered by children and others with disability.⁴⁷ The Committee on the Rights of the Child recommended better disaggregated data collection and use, review of access for children with disability to health care, education and employment services and opportunities and more adequate funding.⁴⁸

3.3 Application of the CRC's Best Interest of the Child Principles

Indonesia's most recent State report to the Committee on the Rights of the Child referred to the application of the best interests principle in practice but noted that "over time this principle appears to be eroding".⁴⁹ Since then the Law on Child Protection has provided specific recognition of the principle as one of the bases of child protection in Indonesia.⁵⁰

The Committee on the Rights of the Child expressed concern that in actions concerning children the best interests of the child are not a primary consideration, including in family law matters.⁵¹ It recommended the review of legislation and administrative measures to ensure its implementation.⁵²

3.4 Application of the CRC's Child Development Principles

The task confronting Indonesia in ensuring the development of all its children is enormous. Although a developing country with limited resources, Indonesia is not a very poor country. However it has over 75 million children among its 220 million people. Even if only 8% of the population lives on less than a dollar a day, that amounts to 17.6 million people, the majority of whom are probably children.

46 "Supplementary report to the second periodic report of Indonesia, Committee on the Rights of the Child", CRC/C/65/Add.23, submitted to the Committee on the Rights of the Child, 2 January 2004, pg 46; "Concluding Observations: Indonesia 24th Session", Committee on the Rights of the Child, CRC/C/15/Add.223, 30 January 2004, para 53

47 "Second periodic reports of States parties due in 1997: Indonesia", Committee on the Rights of the Child, CRC/C/65/Add.23, 2 February 2002, para 253

48 "Concluding Observations: Indonesia 24th Session", Committee on the Rights of the Child, CRC/C/15/Add.223, 30 January 2004, para 54

49 "Second periodic reports of States parties due in 1997: Indonesia", Committee on the Rights of the Child, CRC/C/65/Add.23, 2 February 2002, para 60

50 Law on Child Protection 23/2002 Article 2.

51 "Concluding Observations: Indonesia 24th Session", Committee on the Rights of the Child, CRC/C/15/Add.223, 30 January 2004, para 33

52 para 34, *ibid*

Health issues for Indonesian children vary with age. For those under 5 the issue is surviving and thriving. Malnutrition and preventable disease affect children's growth and development up to adolescence. In adolescence substance abuse and sexual health become significant. The Constitution recognises "the right... to enjoy a good and healthy environment, and ... the right to obtain medical care".⁵³ The State is obliged to provide sufficient medical facilities.⁵⁴

Infant, child and maternal mortality rates have declined by half to two-thirds over the past 15 years.⁵⁵ Causes of infant and child mortality were identified as poor ante-natal and post-natal care, unassisted births, poverty and poor access to health care services and facilities. Pregnancy at a young age and illegal, unsafe abortions affected the maternal mortality rates.⁵⁶ The large declines in the rates have been attributed to improved health care, better public awareness of health issues, including child health care, and a shift from traditional lifestyle patterns.⁵⁷ There continue to be great disparities in infant and under-five rates between urban and rural areas and from region to region. Rural rates are 50 to 100% higher than urban rates and the rate in Eastern Indonesia is 60% higher than the rate in Sumatra.⁵⁸

Many children have low birth weight, are underweight and experience stunting and wasting as a result of malnutrition and disease. Longitudinal comparisons are difficult due to the unreliability of statistics but it appears that there have been substantial variations in malnutrition rates over the past 20 years. The latest estimate is that 9% of children are severely underweight and 19% of children are moderately underweight.⁵⁹ Immunisation rates have been very low but are improving as a result of intensive Government efforts. In 1997 it was estimated that only 50% of children were fully immunised.⁶⁰ In 2004 88% of children had received the first dose of vaccine for diphtheria, whooping cough and tetanus and 70% had received all three required doses.⁶¹ The Committee on the

53 Constitution Article 28H.1

54 Constitution Article 34.3

55 "State of the World's Children 2006", UNICEF, 2006, tables 1 and 8

56 "Second periodic reports of States parties due in 1997: Indonesia", Committee on the Rights of the Child, CRC/C/65/Add.23, 2 February 2002, para 266-267

57 para 269, *ibid*

58 "Supplementary report to the second periodic report of Indonesia", Committee on the Rights of the Child, CRC/C/65/Add.23, submitted to the Committee on the Rights of the Child 2 January 2004 figure VI.3 pg 49 and figure VI.4 pg 70

59 "State of the World's Children 2006", UNICEF, 2006, table 2

60 "Second periodic reports of States parties due in 1997: Indonesia", Committee on the Rights of the Child, CRC/C/65/Add.23, 2 February 2002, para 275

61 "State of the World's Children 2006", UNICEF, 2006, table 3

Rights of the Child recommended Government action to ensure universal access to primary health care, especially maternal and child health care services and facilities, and increased efforts to prevent malnutrition and to extend immunisation. It also recommended a life-course approach to child and adolescent health and development.⁶² While the Government is committed to the extension of health programs, implementation remains highly problematic.

Substance abuse and HIV/AIDS become health issues for children during adolescence. Tobacco smoking is entrenched among Indonesian boys and men. Nationally 27.7% of people aged 10 years and over smoke and the great majority of them are male. 70% of male smokers began before the age of 20.⁶³ Cigarettes are very cheap and are bought and sold both in packets and individually. There seems to be little awareness of the health consequences of tobacco smoking. There is also no sensitivity to the dangers of passive smoking and smoking indoors is widespread and acceptable. One difficulty in reducing tobacco use is that taxes on tobacco provide very significant revenue for the Indonesian Government.

Indonesia has a relatively low prevalence rate of HIV/AIDS.⁶⁴ However, education and awareness about sexual and reproductive health are low due to the conservative, traditional nature of Indonesian culture. Only 7% of women have a comprehensive knowledge of HIV.⁶⁵

The Committee on the Rights of the Child recommended a comprehensive approach to adolescent health that included formal and informal education on HIV/AIDS and sexual health issues and accurate and objective information on the harmful consequences of tobacco use. It also recommended restrictions on tobacco advertising.⁶⁶ The Government is taking a comprehensive approach to health education but it has not restricted tobacco advertising.

Education rights are also recognised and protected in the Constitution.⁶⁷ Every citizen has the right to receive education and the

62 "Concluding Observations: Indonesia 24th Session", Committee on the Rights of the Child, CRC/C/15/Add.223, 30 January 2004, para 57

63 "Supplementary report to the second periodic report of Indonesia", Committee on the Rights of the Child, CRC/C/65/Add.23, submitted to the Committee on the Rights of the Child, 2 January 2004, figure VI.12 pg 55

64 0.1% according to *State of the World's Children 2006* table 4

65 "State of the World's Children 2006", UNICEF, 2006, table 4

66 "Concluding Observations: Indonesia 24th Session", Committee on the Rights of the Child, 30 January 2004, CRC/C/15/Add.223, para 59

67 Constitution Article 28C.1

obligation to undertake basic education. The State has the obligation to fund basic education and to prioritise education by allocating at least 20% of national and regional budgets to education.⁶⁸ Basic education is not defined in the Constitution but in Indonesia it is considered to be nine years of schooling.⁶⁹ The education law prohibits discrimination in access to education.⁷⁰

School net enrolment and attendance rates are relatively high and virtually equal for boys and girls but not universal. Primary school net enrolment is 93% and attendance is 95%.⁷¹ There is a rapid falling off of enrolment and attendance during secondary school. Secondary school net enrolment is 54% and attendance is only 55%.⁷² Although basic education is compulsory and the Government is obliged to fund it, it is not free.⁷³ Secondary schooling is made difficult for students because of the relatively high fees, the inaccessibility of schools for many students and the selection process.⁷⁴ Access to higher education is even more difficult and selective with the number of places well below the level of demand.⁷⁵

The Indonesian Government has allocated a very high priority to basic education but has been unable to fund the provision of universal free primary education and then the extension to lower secondary education. In fact at the time of the monetary crisis from 1998 to 2001 there was pressure to reduce the obligation of nine years of basic education by one year as a result of internationally imposed conditions on loans. The Government did not succumb to this pressure but it struggled to maintain schooling even at the level then provided. During that period school enrolment and attendance declined as families struggled with greatly reduced income. Participation rates have now recovered.⁷⁶ The Government has still been unable to ensure free basic education for all children but it has extended the national scholarship scheme to poorer students.⁷⁷

68 Constitution Article 31. The budgetary obligation is reinforced by Law 20/2003 Article 49.1

69 Introduced under Presidential Instruction 1/1994

70 Law 20/2003 Article 4

71 "State of the World's Children 2006", UNICEF, 2006, table 5

72 "State of the World's Children 2006", UNICEF, 2006, table 5

73 "Second periodic reports of States parties due in 1997: Indonesia", Committee on the Rights of the Child, CRC/C/65/Add.23, 2 February 2002, para 319

74 para 321, *ibid*

75 para 325, *ibid*

76 para 359-361, *ibid*

77 para 342, *ibid*

The goal of increasing school performance is promoted by early childhood programs. In this respect, the provision of services is the most inadequate and the regional variation the greatest. Nationally only 28% of children up to 6 years have access to any form of early childhood education. In East Nusa Tenggara access is as low as 12%, while in Yogyakarta it is as high as 55%.⁷⁸ Without increased provision of early childhood services it will prove difficult to improve school achievement rates.

Indonesian non-government organisations have criticised the Government for insufficient effort to ensure free, compulsory primary education and expressed concern that the decentralisation program in Indonesia will further undermine the full enjoyment of the right to education.⁷⁹ They have called for progressively increased education budgets especially for primary education.⁸⁰

The Committee on the Rights of the Child expressed its concerns that “education is not free, even at the primary level”. It highlighted several other areas of concern, including drop out rates, high teacher-pupil ratios and violence in schools.⁸¹ It also expressed concern about the narrow education provided in some religious schools.⁸² It made a series of recommendations addressing these concerns and directed towards universal, free primary education, the elimination of educational inequalities based on gender, region and socio-economic status and the promotion of human rights education.⁸³ There has been little progress in these areas since the recommendations were made.

Indonesian **family** structures are strong and their fundamental role in the lives of children is affirmed in Indonesian law. The Constitution recognises the right to establish a family and the right of the child “to live,

78 “Supplementary report to the second periodic report of Indonesia”, Committee on the Rights of the Child, CRC/C/65/Add.23, submitted to the Committee on the Rights of the Child 2 January 2004, figure VII.6 pg 71

79 “Comments on the First Periodic Report of the Government of Indonesia to the Committee on the Rights of the Child”, Indonesian NGO Coalition for CRC Monitoring, undated; “Concluding Observations: Indonesia 24th Session”, Committee on the Rights of the Child, CRC/C/15/Add.223, 30 January 2004, para 24

80 “Comments on the First Periodic Report of the Government of Indonesia to the Committee on the Rights of the Child”, Indonesian NGO Coalition for CRC Monitoring, undated; “Concluding Observations: Indonesia 24th Session”, Committee on the Rights of the Child, CRC/C/15/Add.223, 30 January 2004, para 56

81 “Concluding Observations: Indonesia 24th Session”, Committee on the Rights of the Child, CRC/C/15/Add.223, 30 January 2004, para 61

82 para 62, *ibid*

83 “Concluding Observations: Indonesia 24th Session”, Committee on the Rights of the Child, CRC/C/15/Add.223, 30 January 2004, para 63

to grow and to develop”.⁸⁴ The Law on Child Protection imposes responsibilities on parents for the care, education and protection of their children.⁸⁵ Family customs and traditions vary from group to group in Indonesia and relations between parents and children are affected by the prevailing family system in the group into which the child is born. Most cultures have large extended families that continue to exist in rural areas but now are being replaced by smaller family structures in the cities.⁸⁶ Indonesian law defines a family as a nuclear family, which is considered restrictively as composed of a husband and wife.⁸⁷ The Indonesian State report refers to limited information about and understanding of children's rights within families. It describes “a culture that tolerates parents who neglect their responsibilities and obligations to the child, an authoritarian behaviour on the part of parents, and neglect and exploitation of children due to economic difficulties”.⁸⁸

The great majority of Indonesian children live with their families. According to Indonesian law and tradition children cannot be separated from their parents, with very few exceptions that are generally beyond the control of one or both of the parents, such as death, divorce or imprisonment.⁸⁹ Where for any reason a parent cannot fulfil his or her responsibilities towards a child, those responsibilities can be transferred to the child's relatives.⁹⁰ Alternative care of children is primarily undertaken by the extended family or other members of the family's community.⁹¹ Most separations of children from parents are the result of family poverty and most alternative care arrangements made in those circumstances are informal arrangements that are intended to be temporary, at last at the beginning.

84 Constitution Article 28B

85 Law on Child Protection 23/2002 Article 26.1

86 “Second periodic reports of States parties due in 1997: Indonesia”, Committee on the Rights of the Child, CRC/C/65/Add.23, 2 February 2002, para 127

87 “Supplementary report to the second periodic report of Indonesia”, Committee on the Rights of the Child, CRC/C/65/Add.23, submitted to the Committee on the Rights of the Child, 2 January 2004, pg 24

88 “Second periodic reports of States parties due in 1997: Indonesia”, Committee on the Rights of the Child, CRC/C/65/Add.23, 2 February 2002, para 140

89 “Second periodic reports of States parties due in 1997: Indonesia”, Committee on the Rights of the Child, CRC/C/65/Add.23, 2 February 2002, para 157-163

90 “Supplementary report to the second periodic report of Indonesia”, Committee on the Rights of the Child, CRC/C/65/Add.23, submitted to the Committee on the Rights of the Child, 2 January 2004, pg 26

91 “Second periodic reports of States parties due in 1997: Indonesia”, Committee on the Rights of the Child, CRC/C/65/Add.23, 2 February 2002, para 197

State and other support for children is limited when families and communities cannot cope. Under the Constitution the State is required to take care of neglected children.⁹² In fact public resources are insufficient for a comprehensive State **alternative care** system. The number of orphanages doubled during the 1990s but even then there were less than 2000.⁹³ As a result older separated children tend to become street children and only the younger ones find places in institutions. The Government has set minimum standards for institutions but most do not meet these standards.⁹⁴

The Committee on the Rights of the Child expressed its concern at the numbers of children placed in institutions and the living conditions in the institutions.⁹⁵ It recommended a program of clear standards and monitoring institutions, periodic review of placements and family reunification. Placement of children in institutions should be a measure of last resort.⁹⁶

In spite of the constitutional guarantees on child protection, Indonesia has no effective national system for the protection of children abused and exploited and for the prevention of abuse and exploitation.⁹⁷ There are now child protection bodies in about 20 provinces but their status and functions vary.⁹⁸ There is no national system for receiving, monitoring and investigating complaints of child abuse and neglect. Very few cases of child abuse are reported to the police.⁹⁹ Other surveys and studies of the incidence of abuse of children have produced very low results that cannot be considered reliable. Generally family violence is considered a private matter that is culturally accepted and so not reported and not investigated.¹⁰⁰ Corporal punishment is a general practice in families and schools.¹⁰¹ The recommendation of the Committee on the Rights of the Child to prohibit corporal punishment has not been implemented.

92 Constitution Article 34.1.

93 "Second periodic reports of States parties due in 1997: Indonesia", Committee on the Rights of the Child, CRC/C/65/Add.23, 2 February 2002, para table 7

94 "Second periodic reports of States parties due in 1997: Indonesia", Committee on the Rights of the Child, CRC/C/65/Add.23, 2 February 2002, para 203

95 "Concluding Observations: Indonesia 24th Session, Committee on the Rights of the Child", CRC/C/15/Add.223, 30 January 2004, para 49

96 "Concluding Observations: Indonesia 24th Session, Committee on the Rights of the Child", CRC/C/15/Add.223, 30 January 2004, para 50

97 "Supplementary report to the second periodic report of Indonesia", Committee on the Rights of the Child, CRC/C/65/Add.23, submitted to the Committee on the Rights of the Child, 2 January 2004, pg 43.

98 IBCR interview with UNICEF Indonesia, October 2005

99 From 1999 to 2002 only 810 cases: "Supplementary report to the second periodic report of Indonesia", Committee on the Rights of the Child, CRC/C/65/Add.23, submitted to the Committee on the Rights of the Child, 2 January 2004, pg 42

100 "Second periodic reports of States parties due in 1997: Indonesia", Committee on the Rights of the Child, CRC/C/65/Add.23, 2 February 2002, para 23

101 para 236, *ibid*

Street children are especially vulnerable to abuse and exploitation by members of criminal gangs and others. They are also subjected to violence, arbitrary arrest and detention at the hand of police and other government agents.¹⁰² The Committee on the Rights of the Child recommended that the State take all necessary measures to end this abuse by State agents and bring to justice those responsible for it.¹⁰³

The State report estimates the number of children on the streets at 60,000 to 70,000 but in fact there is no reliable estimate available.¹⁰⁴ The number certainly increased substantially at the time of the monetary crisis of 1998 to 2001 and it seems there has been little decline since the economy has revived.

Children live and work on the streets in Indonesia for predominantly economic reasons. Although some have run away from their homes, the great majority have not. The State report estimates that only 10 to 15% have run away from their homes and they did so because of violence or neglect.¹⁰⁵ Street children therefore are not necessarily without homes and families, although they may be. Many simply work on the streets in the informal economy to support themselves or to contribute to family income. Some live with their families on the streets. Others have left their families and both work on the streets and live with other children on the streets.

The Indonesian Government's response to street children's needs has been minimal, principally consisting of a small number of individual, small scale projects. The greater part of the responsibility for assisting street children has been taken by non-government organisations that have provided innovative, often highly professional, support services, almost always with little or no financial support.

Lack of universal **birth registration** makes it difficult to track the well-being and safety of children, whether in their families and communities or on the streets. Birth registration rates in Indonesia remain low because registration can be difficult and costly for people with little ready cash.

102 "Comments on the First Periodic Report of the Government of Indonesia to the Committee on the Rights of the Child", Indonesian NGO Coalition for CRC Monitoring, undated, para 36 and 60

103 "Concluding Observations: Indonesia 24th Session, Committee on the Rights of the Child", CRC/C/15/Add.223, 30 January 2004, para 80

104 "Supplementary report to the second periodic report of Indonesia", Committee on the Rights of the Child, CRC/C/65/Add.23, submitted to the Committee on the Rights of the Child, 2 January 2004, pg 41

105 *ibid*

According to a survey in 2001, almost 60% of children under 5 had not been registered and only 25% had a birth certificate that could be produced. The proportion of children with birth certificates was 30% higher in towns than in villages. UNICEF estimates show a higher rate of registration (55%) but also a higher urban-rural disparity (more than 50%).¹⁰⁶ The cost of registration, lack of knowledge of the procedure or of awareness of its importance and the distance to the registration authority were the principal reasons given for non-registration.¹⁰⁷

Birth registration continues to be governed by several laws with differential application. The Law on Child Protection did not replace these earlier laws but it provided for free registration.¹⁰⁸ Nonetheless registration is still not universally free. The Government has undertaken a number of local projects to promote registration, including by waiving fees, but fees are still charged by local authorities in most areas.¹⁰⁹ Only 21 local authorities have adopted laws on free universal registration.¹¹⁰ The birth registration rate remains low. The Committee on the Rights of the Child has recommended a comprehensive strategy to achieve universal registration by 2015.¹¹¹

Exploitation of children in Indonesia can take many forms. **Child labour** is “a major problem”.¹¹² It includes children undertaking agricultural, plantation and mining work in rural areas and working in companies, households and on the streets in urban areas. Child labourers also spend long periods isolated on fishing platforms, especially off the island of Sumatra.¹¹³ The number of child labourers is unknown.¹¹⁴ A survey in 2000 indicated that 1.69 million children aged 10 to 14 (5.69% of children in that age

106 “State of the World’s Children 2006”, UNICEF, 2006, table 9

107 “Supplementary report to the second periodic report of Indonesia”, Committee on the Rights of the Child, CRC/C/65/Add.23, submitted to the Committee on the Rights of the Child, 2 January 2004, pg 15 and table IV.1

108 Law on Child Protection 23/2002 Article 28.3

109 “Comments on the First Periodic Report of the Government of Indonesia to the Committee on the Rights of the Child”, Indonesian NGO Coalition for CRC Monitoring, undated, para 17

110 IBCR interview with UNICEF Indonesia, October 2005

111 “Concluding Observations: Indonesia 24th Session, Committee on the Rights of the Child”, CRC/C/15/Add.223, 30 January 2004, para 39

112 Appendix to Presidential Decree 59/2002 *National Action Plan for the Elimination of the Worst Forms of Child Labour* pg 6

113 “Second periodic reports of States parties due in 1997: Indonesia”, Committee on the Rights of the Child, CRC/C/65/Add.23, 2 February 2002, para 539

114 Appendix to Presidential Decree 59/2002 *National Action Plan for the Elimination of the Worst Forms of Child Labour* pg 5

group) work. Another in 2000-2001 estimated that about 70% of 10 to 14 year old children were family workers or unpaid workers. It also estimated that the majority of them worked more than 35 or 40 hours a week. A third survey in 2001 found that over 4% of 5 to 14 year old children worked, with the proportion in rural areas two to three times that in urban areas.¹¹⁵ According to UNICEF, 5% of boys and 4% of girls between the ages of 5 and 14 work.¹¹⁶

The most important factor driving child labour is child and family poverty and expectations that children will assist in family farming and business to increase family income.¹¹⁷ The evidence is that urban child labour rates increase in times of economic decline and decrease as the economy recovers.¹¹⁸

The Indonesian Government has legislated to regulate child employment and prohibit many forms of child labour.¹¹⁹ It has set minimum ages for employment.¹²⁰ Its principal focus has been addressing the worst forms of child labour prohibited by International Labour Organisation Convention 182. In 2002 the President of Indonesia approved the National Plan of Action for the Elimination of the Worst Forms of Child Labour and established a National Action Committee to monitor and evaluate its implementation.¹²¹ The Plan has 5, 10 and 20 year phases with targets. Phase 1 combines programs of research, public information, development of models, law review and harmonisation, awareness raising, advocacy and institutional capacity building.

Commercial sexual exploitation is among the worst forms of child abuse and child labour. The National Plan of Action for the Eradication of Commercial Sexual Exploitation of Children estimates that 30% of all sex workers in Indonesia are children, around 40,000 to 70,000 children. Most are girls, although there is also a small number of boys. The Plan

115 "Supplementary report to the second periodic report of Indonesia", Committee on the Rights of the Child, CRC/C/65/Add.23, submitted to the Committee on the Rights of the Child, 2 January 2004, pg 100

116 "State of the World's Children 2006", UNICEF, 2006, table 9

117 "Supplementary report to the second periodic report of Indonesia", Committee on the Rights of the Child, CRC/C/65/Add.23, submitted to the Committee on the Rights of the Child, 2 January 2004, pg 99

118 Committee on the Rights of the Child *Second periodic reports of States parties due in 1997: Indonesia* 2 February 2002 (CRC/C/65/Add.23) para 557-558

119 Law on Labour Law 13/2003 Articles 69 to 73

120 Law 20/1999

121 Presidential Decree 59/2002

forecasts that child prostitution will continue to increase.¹²² The Plan presents a four part strategy, involving collaboration and coordination among government and non-government agencies, prevention through increased information, education and support for children at risk, protection through stronger laws and more effective implementation of laws, and recovery and re-integration, without punishment, for child victims. The Ministry of Women's Empowerment has a child protection section that undertakes capacity building for police, prosecutors and orphanages.¹²³

Addressing commercial sexual exploitation also requires addressing **trafficking of children**. Children are trafficked in Indonesia for sexual purposes both internally and internationally. Internationally Indonesia is a country of origin with countries of destination being neighbouring States.¹²⁴ Trafficking can also be for non-sexual purposes, associated with poorly paid labour in poor conditions. Trafficked victims are usually children and young unmarried women.¹²⁵

At the time of the State report to the Committee on the Rights of the Child, there was little known about trafficking in and from Indonesia.¹²⁶ The supplementary report two years later provided an initial analysis of the problem but no estimate of its extent.¹²⁷ The problem was seen as so serious and so closely connected to commercial sexual exploitation of children that a National Plan of Action for the Elimination of Trafficking in Women and Children was adopted at the same time as the plan on commercial sexual exploitation.¹²⁸ The Plan identifies the factors in trafficking and adopts a six point strategy for a coordinated response. Under the Plan a special police unit has been established to deal with transnational crime, include trafficking.¹²⁹

122 "National Plan of Action for the Eradication of Commercial Sexual Exploitation of Children", 2002, pg 18

123 IBCR interview with Deputy Minister for Child Protection, Ministry of Women's Empowerment, October 2005

124 "National Plan of Action for the Eradication of Commercial Sexual Exploitation of Children", 2002, pg 18

125 "National Plan of Action for the Eradication of Commercial Sexual Exploitation of Children", 2002, pg 10

126 "Second periodic reports of States parties due in 1997: Indonesia", Committee on the Rights of the Child, CRC/C/65/Add.23, 2 February 2002, para 607, 610

127 "Supplementary report to the second periodic report of Indonesia", Committee on the Rights of the Child, CRC/C/65/Add.23, submitted to the Committee on the Rights of the Child, 2 January 2004, pg 111 to 113

128 Presidential Decree 88/2002 on the National Plan of Action for the Elimination of Trafficking in Women and Children

129 IBCR interview with UNICEF Indonesia. October 2005

3.5 Application of the CRC's Child Participation Principles

Indonesia's traditional society and "paternalistic and feudal culture" present difficulty in promoting children's right to participate in decisions that affect them.¹³⁰ The State report leaves this right to non-government organisations to promote.¹³¹ The law now provides some limited recognition of this right, however, by incorporating the principles of the Convention on the Rights of the Child and providing children with the right to be heard on child protection matters.¹³²

The Committee on the Rights of the Child found that children were "rarely heard in the family, schools and communities, even on matters concerning them".¹³³ It recommended amending the law to reflect the principle of children's participation and a public awareness campaign to promote the right.¹³⁴ There have been small initiatives to promote children's participation: workshops in 17 provinces, the publication of best practice examples and a series of national children's congresses that make recommendations to the President.¹³⁵ However, Indonesian children continue to struggle to have their views heard and taken into account.

3.6 Application of Other Principles Worthy of Note

The situation of children in the **juvenile justice** system is a matter of grave concern in Indonesia. There was no specific legal framework for children accused of a crime until 1997 when the Law on the Juvenile Court was enacted.¹³⁶ That law provided specially for these children, introducing a juvenile justice procedure for the first time and allowing the establishment of a specialist juvenile court. The juvenile court has still not been established, however, and so children continue to be tried in adult courts, although under a special procedure for juveniles.¹³⁷ The special procedure is intended to provide greater protection for children in the justice system. The law also sets a very low age of criminal responsibility, 8 years,

130 "Second periodic reports of States parties due in 1997: Indonesia", Committee on the Rights of the Child, CRC/C/65/Add.23, 2 February 2002, para 72

131 para 73, *ibid*

132 Law on Child Protection 23/2002 Articles 2 and 24

133 "Concluding Observations: Indonesia 24th Session, Committee on the Rights of the Child", CRC/C/15/Add.223, 30 January 2004, para 35

134 "Concluding Observations: Indonesia 24th Session, Committee on the Rights of the Child", CRC/C/15/Add.223, 30 January 2004, para 36

135 UNICEF Indonesia *Annual Report 2004*; IBCR interview with National Commission on Child Protection, October 2005

136 Law on the Juvenile Court Law 3/1997

137 "Supplementary report to the second periodic report of Indonesia", Committee on the Rights of the Child, CRC/C/65/Add.23, submitted to the Committee on the Rights of the Child, 2 January 2004, pg 93

and permits criminal investigation in relation to children below that age. The law does not reflect the relevant requirements of the Convention on the Rights of the Child.¹³⁸

The number of children who enter the criminal justice system is quite low but once they enter it they are treated harshly and in violation of their rights under the Convention on the Rights of the Child. Around 4000 children under 16 and a similar number aged 16 and 17 are brought before the courts each year. Around 98% are boys. About twice that number are arrested. Of those who go to court, 83% are imprisoned, a very high rate of imprisonment that gives rise to questions whether imprisonment is being used as a last resort.¹³⁹ The majority of children sentenced to imprisonment receive a term of less than one year, implying that the offence for which they have been convicted is relatively minor. This too raises questions about whether imprisonment is being used only as a last resort.

The number of child prisoners and detainees in May 2003 was 3004, of whom 95.6% were boys.¹⁴⁰ There are 16 juvenile prisons for boys in Indonesia but a large number of boys are detained in men's prisons or in juvenile prisons in which men are also placed because of over-crowding in the adult prisons.¹⁴¹ Boys have separate cells when in adult prisons but in most instances men and boys mix quite freely for most of the day. This places the boys in situations of serious risk of physical and sexual assault by men. There are no juvenile prisons for girls and so girls are always accommodated with women.

Conditions in the prisons are usually rudimentary and there is little for prisoners to do. Few opportunities for rehabilitation are provided, with limited or no education and training. Children are able to learn little and cannot prepare themselves for re-integration into society. Most prisons are overcrowded.

138 Convention on the Rights of the Child Articles 37 and 40: "Comments on the First Periodic Report of the Government of Indonesia to the Committee on the Rights of the Child", Indonesian NGO Coalition for CRC Monitoring, undated, para 30

139 "Supplementary report to the second periodic report of Indonesia", Committee on the Rights of the Child, CRC/C/65/Add.23, submitted to the Committee on the Rights of the Child, 2 January 2004, pg 93

140 pg 95, *ibid*

141 In August 2003 the prison system had a capacity of 65,000 persons but 84,000 prisoners: pg 98, *ibid*

Judges and court officials, police, prison officers and others involved with juvenile offenders receive little training on the rights and needs of the young offenders. While the juvenile criminal procedure law is operational, its provisions are not well known and frequently not implemented. In 2004 40 senior police officers were trained as trainers on juvenile justice issues.¹⁴² This may lead to wider knowledge of the law and of human rights obligations but progress and change will remain slow.

The Committee on the Rights of the Child addressed many of these issues in its recommendations to Indonesia. In particular it recommended increasing the age of criminal responsibility, the use of imprisonment only as a last resort, separation of juvenile and adult detainees, specially trained police units, improved conditions of detention and full implementation of international juvenile justice standards.¹⁴³ The age of criminal responsibility has not been changed and there has been little action to implement the other recommendations.

4.0 Overall Assessment

The greatest challenge confronting Indonesia in ensuring the full enjoyment of all the rights of all its children is the sheer numbers involved. Indonesia is a developing country but it is not among the least developed and poorest. It has resources it can mobilize. It also has a very stable, democratic political system with a number of effective, skilled leaders. But the challenge is to meet the needs and ensure the rights of more than 75 million children. That is no small task.

Indonesia has a strong base from which to work. In spite of the violence that accompanied the overthrow of the New Order regime in 1998 and that broke out in a number of regions in the years immediately after that, Indonesia is accomplishing its transition from an authoritarian State to a plural democracy far better than most States in comparable situations. Nonetheless violence has made the past years difficult. The conflicts in Sulawesi, Ambon, Kalimantan, Papua and especially Aceh caused instability not only in those areas but generally. They reflected more than anything the lengths to which elements in the military and extremist groups would go to undermine the transition process. But they failed. The most serious of the major conflicts, and the most complex one,

142 UNICEF Indonesia Annual Report 2004

143 "Concluding Observations: Indonesia 24th Session, Committee on the Rights of the Child", CRC/C/15/Add.223, 30 January 2004, para 78

has been resolved with the ceasefire and peace agreement in Aceh. The situation in Papua is now the most serious and to date there has been little progress in achieving an effective settlement of the conflict there. Independence for East Timor has resolved the most serious obstacle to Indonesia's own development.

The role of the Indonesian military remains problematic. The first three Presidents after 1998 failed to bring it under effective civilian control and to force it to conduct itself in accordance with human rights obligations. The present President, Susilo Bambang Yudhyono, needs to succeed where his predecessors failed.

Indonesia has had three peaceful transitions of political leadership in the eight years since 1998, the last having been achieved after a complex series of elections spread over the better part of a year. There is strong public endorsement of the reform directions and a commitment to maintaining the course. The gravest threat to that is a sense that so far too little has changed, a sense of frustration. Addressing that frustration, especially among young people, will be necessary if reform is to succeed.

Since 1998 Indonesia has rebuilt its political and legal system. Although there remain significant gaps, it now has a good framework of law, including human rights law, on which to base better protection and promotion of children's rights. It has developed plans and strategies to address many of the most pressing problems of children: the worst forms of child labour, commercial sexual exploitation, trafficking. It has a six-year National Action Plan for Human Rights that includes children as one of the groups given special attention. Unfortunately Indonesia is better at enacting laws and adopting plans and strategies than at implementing them. Implementation of these plans must now be the priority.

For all these setbacks and difficulties Indonesia is doing better than most countries in similar situations and has the capacity to ensure significant progress in the enjoyment of children's rights. Principally it will be a matter of political will and political competence.



Children's Rights Profile on Sri Lanka



1.0 Introduction

1.1 Country Overview

1.1.1 Political System¹

Sri Lanka gained political independence in 1948 after nearly 150 years of British rule. The 1948 Constitution was a variation of the Westminster system. The Independence Constitution of 1948 was replaced in 1972 by the First Republican Constitution. The Governor General (under the 1948 Constitution) was replaced by a President who performed much the same tasks. He or she was appointed by the Prime Minister and carried out the role of a ceremonial head of State. The legislative power was vested in the National State Assembly which was made a unicameral body, made up of the members of the existing House of Representatives. The Prime Minister was appointed by the President and his or her powers depended on the support of a majority in the legislature. The Constitution also introduced some novel features, among them a chapter on Fundamental Rights and Freedoms. However, soon after the change of Government in 1977 the First Republican Constitution was replaced by the Second Republican Constitution. It introduced a presidential system of government and a series of safeguards for individual and minority rights.

Under the 1978 Constitution the head of the Government is the Executive President who is elected by the people for a term of six years, and cannot be elected for more than two terms. He or she is the head of State, the head of the executive and of the Government, and commander in chief of the armed forces. He or she has the power to declare war and make peace, appoints the Prime Minister and all cabinet ministers and assigns portfolios to them. The President, together with the cabinet, is collectively responsible and answerable to Parliament. The President has the power to initiate a referendum on any bill on any matter of national importance and has the discretion to determine whether a proclamation of a state of emergency is necessary. However, the Constitution provides for parliamentary monitoring of emergency powers. A proclamation of emergency would lapse after a period of 14 days unless approved by Parliament. The safeguards against the abuse of power by the President lie largely in the separation of executive, legislative and judicial powers.

1 The information in this section is taken from the “core” document that the Sri Lankan government submitted to the United Nations in 1994 for use of the treaty bodies; “Core Document Forming Part of the Reports of States Parties”, UN Doc. HRI/CORE/1/Add.48, 8 November 1994

1.1.2 Human Rights²

The preamble to the 1978 Constitution of Sri Lanka assures to “all peoples, freedom, equality, justice, fundamental human rights, and the independence of the judiciary, as the intangible heritage that guarantees the dignity and well-being of succeeding generations of the People of Sri Lanka, and of all the people of the world” who strive for “the creation and preservation of a just and free society”. Articles 10 through 16 of the Constitution describe the fundamental rights which the people and citizens of Sri Lanka enjoy under constitutional protection. The Constitution is structured to promote and preserve the best democratic features which have gained universal acceptance. Almost all the important rights enumerated in the International Bill of Human Rights have been incorporated in the Constitution in Chapter III, “Fundamental Rights”, including *inter alia*: Freedom of thought, conscience and religion; freedom from any disability, liability, restriction or condition with regard to access on grounds of race, religion, language, caste or sex; freedom of speech and expression including right to publication; freedom of peaceful assembly; freedom of association; freedom to form and join trade unions; freedom to manifest a person’s religion or belief by practice, teaching, worship or observance; freedom to promote a person’s culture and language; freedom to engage in any profession, trade, occupation, business or enterprise, freedom of movement and residence within Sri Lanka and the right of return to Sri Lanka; and equality before and under the law.

In 1997, the Government inaugurated the National Human Rights Commission. The powers and objectives of the commission are as follows: Investigate complaints pertaining to the violation of fundamental rights and resolve disputes through mediation and conciliation; power to design such programmes and plan such actions promoting the human rights and fundamental freedoms of minorities and disadvantaged groups; and advise anybody – institution or person, governmental or non-governmental – regarding the incorporation of human rights norms in any legislation, subsidiary legislation, administrative practices or other document, code or practice. In the area of dispute resolution, the Commission has the jurisdiction to inquire into any allegation regarding the infringement or imminent infringement by State action of fundamental rights at its own initiative, or on receiving a complaint from the person aggrieved or a body of persons concerned with the protection of human rights acting *bona fide*.

2 ibid

The review of legislation already in force and the consideration of amendment or enactment of new legislation in order to bring the legal system in accordance with international standards of human rights are undertaken by the Sri Lanka Law Commission. The question of supplementing the existing legislation in light of Sri Lanka's accession to international instruments relating to human rights is also considered by the Commission. As well, the Government established by statute The Sri Lanka Foundation with the aim and object of protecting human rights, promoting international understanding and cooperation and ensuring universal respect for the observance of human rights and fundamental freedoms for all without distinction. The Human Rights Centre of the Foundation is directly involved in human rights education and dissemination of information.

Sri Lanka has also provided opportunities for international human rights organizations, such as Amnesty International, to visit the country in order to evaluate the observance of human rights. Also for the same purposes, officials from countries such as the United States of America, Canada and the United Kingdom have visited the island. The International Committee of the Red Cross has been afforded facilities to operate in the north and east and in other areas stricken by civil disturbances.

The United Nations Information Centre in Sri Lanka serves as a focal point in the dissemination of United Nations-related information. Its responsibilities include maintaining a close relationship with the Government, ministries, research institutions and officials and responding to the different needs for information on the United Nations. The Centre for the Study of Human Rights of the University of Colombo, which has been in operation since October 1991, works closely with the United Nations Information Centre, local and international NGOs and educational institutions to design and facilitate human rights education and research.

1.1.3 The Welfare State³

The democratic political system and the way in which it has evolved have been supportive of the processes which expanded and strengthened the social welfare programmes, including those which pertain to children. With Sri Lanka's independence in 1948 emerged a welfare ideology in

3 The information in this section is taken from the State party report issued by the government of Sri Lanka to the Committee on the Rights of the Child; "Initial reports of States parties due in 1993: Sri Lanka", UN Doc. CRC/C/8/Add.13, 5 May 1994

which the State assumed responsibility for the services related to basic needs and were protective of the poorer segments of the population. In turn, this ideology has influenced the policies of the various Governments which came to power. For example, it shaped the development policies which gave high priority to the distribution of State land to the landless poor with a package of assistance. One of the major social objectives of policy makers was to protect the consumer from the increase of prices of essential consumer goods and for this purpose parties used a variety of controls and instruments such as subsidies and administered prices. Items which had a direct impact on the well-being of children, such as infant milk formula, appear to have received particular attention in this regard.

With the economic reforms of 1977 a break with the past policies – which had relied heavily on State management of the economy and the use of regulatory measures and instruments such as the subsidies – began to take form. In efforts to develop a more efficient market economy the major parts of the social welfare system, such as the country's food stamp programme that was put into place in 1978, were retained. Alongside these welfare programmes the Government began implementing large-scale programmes for the alleviation of poverty designed to raise the income-earning capacity of low-income households to take them above the poverty level.

1.1.4 The Population⁴

Sri Lanka is a multiracial and multireligious nation. In 2003, the total population of the island was 20 million. The composition of the population includes the following races, in order of prevalence: Sinhalese; Sri Lanka Tamil; Indian Tamil; Sri Lanka Moor; Malays, Burghers and others. The religious composition includes, in order of prevalence: Buddhists; Hindus; Muslims; Christians; and others. These races and religions entered the island at different times in the course of its history and contributed to form a single nation. Thus, from early times Sri Lanka has been a multi-ethnic society – a concept which emphasizes harmony and a spirit of live and let live – rather than a pluralist society.

Due to the availability of free health facilities and their widespread utilization, life expectancy among Sri Lankans rose to 73 in 2003. In the

4 The information in this section is taken from the “core” document that the Sri Lankan government submitted to the United Nations in 1994 for use of the treaty bodies; UN Doc. HRI/CORE/1/Add.48, 8 November 1994 as well as UNICEF's *The State of the World's Children 2005*, coupled with statistics from the United Nations Development Programme.

same year, infant mortality dropped to approximately 13 per 1,000 live births and the maternal mortality rate was at 92 per 100,000 live births. The annual population growth rate in 2003 dropped to 0.7% and the total fertility rate dropped to 2 births per woman. Among the factors responsible for falling birth rates were the rise in the age of marriage of females and the increased use of family planning methods. The rise in life expectancy and the reduction in fertility have caused a gradual ageing of the population. The proportion of the population below the age of 15 has dropped while the proportion above the age of 60 years has risen during the last three decades. Yet Sri Lanka has a fairly young population with about 24.8% estimated to be below the age of 15.

According to data from 2003, 21.1% of the population was living in urban areas. Although the population density was high in the metropolitan areas, the urban drift in Sri Lanka was relatively weak. Between data collected in 1975 and statistics from 2003 the proportion of population classified as rural dropped by less than 1%. Factors responsible for weakening the urban drift included the opening of new lands following the extension of irrigation facilities, increasing employment opportunities in the rural sector, the recent emphasis placed on provision of rural housing, and the development of near-urban facilities in the spheres of housing and education, even in remote areas.

Sri Lanka enjoys a high level of literacy reflecting the emphasis placed on education. According to data from 2003, 90.4% of the population above the age of 15 was literate, while the literacy rate was 95.6% for teenagers between the ages of 15 and 24. The dynamism of the Sri Lankan economy driven by high growth in response to liberalization policies and structural reforms has continued. The rise in national savings, surge in capital inflows induced partly by high interest rate differentials and a boom in the financial markets are some of the reasons. Reflecting these developments, the GDP per capita annual growth rate from 1990 to 2003 was 3.3%. Per capita GDP in current market prices increased from 588 USD in 1993 to 948 USD in 2003.

1.2 The Children of Sri Lanka⁵

The policies and institutions in Sri Lanka that are concerned with the well-being of children have evolved over a long period and have been developed as part of the country's major social welfare programmes high-

5 The information in this section is taken from the initial report issued by the government of Sri Lanka to the Committee on the Rights of the Child; UN Doc. CRC/C/8/Add.13, 5 May 1994.

lighted above. These programmes include the free health services and free education from the primary to the tertiary stages. From the early 1940s, the Government has attempted to allocate resources to these programmes to extend their reach to all parts of the country and serve all social strata. In each of these programmes the component relating to early childhood appears to have received special attention. In the national health system, for example, the quality and the reach of the maternal and child health care services has resulted in a decline in infant, child and maternal mortality. The expansion of the educational system has led to increased rates of participation at the primary and secondary levels with school enrolment at the primary level reaching 90% by the early 1960s. The food subsidies combined with special feeding programmes for needy mothers and pre-school children, as well as midday meals for schoolchildren, provided a fair degree of food security for poor households. Through these programmes, the State assumed a large measure of responsibility for providing the basic needs of children.

Despite the successes which Sri Lanka has had in respect of child survival and reduction of infant and child mortality, some of the social indicators point to a sizeable segment of the child population which suffers from various types of deprivation. Beneath the national averages that have been cited above, there are regional variations and groups of disadvantaged children which require special attention. The plantation sector, with large concentrations of resident workers of Indian descent, has lagged behind the national averages for a long period after independence. There has, however, been an improvement in the recent past both in terms of health and child survival. However, the field of education, in terms of participation, retention in schooling and quality of the facilities available to the plantation sector, can be regarded as a relatively deprived area.

Alongside the systemic problems which have persisted, new problems are now emerging which can have harmful impacts on the well-being of children. The rapid expansion of tourism has created conditions and opportunities which result in the exploitation of children in various forms. Child prostitution and drug addiction are causing concern. The increasing participation of women in the workforce and the changes in gender relations and lifestyles are affecting the family environment and changing the pattern of childcare and upbringing. The exposure of the young to the outside world through the print and audio-visual media are having both positive as well as negative effects; the processes of formal and non-formal education have to develop the capacities of the young to respond to these influences critically and select intelligently from among them.

1.3 Facts at a Glance (2003-2006)⁶

- Population in 2003 was 20 million, of which the urban population accounted for 21.1%; and the under age 15 population accounted for 24.8% of the total.
- The GDP for 2003 was 18.2 billion USD; the GDP per capita was 948 USD; GDP per capita annual growth rate for the period of 1990-2003 was 3.3%.
- The total health care expenditure for 2002 was 1.2% of the GDP and the health care cost per capita was 131 USD.
- In 2002, 22% of the population was without sustainable access to an improved water source.
- In 2003, the annual number of births was 312,000; the annual number of deaths for children below 5 years was 5,000.
- In 2003, the infant mortality rate was 13 per 1,000 live births; for children below 5 years it was 15 per 1,000 live births.
- The percentage of children under age 5 who were considered underweight for their age in 2003 was 29%.
- In 2003, 99% of 1 year-olds were fully immunized against tuberculosis and 99% of 1 year-olds were fully immunized against measles.
- The net primary school enrolment/attendance for 2003 was 100% and the percentage of children reaching grade 5 for the 2001/02 academic year was 98.6%.
- The combined gross enrolment ratio for primary, secondary and tertiary schools for the 2002/03 academic year was 69.2%

6 The data provided in this section is the most current available. It is quoted from UNICEF's *The State of the World's Children 2005*, coupled with statistics from the United Nations Development Programme.

2.0 International Conventions and Treaties

Date of admission to UN: 14 December 1955

Convention on the Rights of the Child

- Signed: 26 January 1990; ratified 12 July 1991
- Reservations and declarations: Article 3
- Sri Lanka's second periodic report was considered by the Committee on the Rights of the Child at its May 2003 session; its third and fourth reports are to be submitted as one consolidated report by 10 August 2008.

Optional Protocol (Sale of Children)

- Reservations and declarations: Article 3
- Signed: 8 May 2002.

Optional Protocol (Armed conflict)

- Reservations and declarations: Article 3
- Signed 21 August 2000; ratified 8 September 2000
- Sri Lanka's initial report was due 12 February 2004.

International Covenant on Economic, Social and Cultural Rights

- Acceded: 11 June 1980
- Sri Lanka's initial report was considered by the Committee on Economic, Cultural and Social Rights at its April 1998 session; its third periodic report was due 30 June 2000.

International Covenant on Civil and Political Rights

- Acceded: 11 June 1980 – Reservations and declarations: Articles 1, 41
- Sri Lanka's fourth periodic report was considered by the Human Rights Committee at its November 2003 session; its fifth periodic report is due 1 November 2007.

Optional Protocol (International Covenant on Civil and Political Rights)

- Acceded: 3 October 1997
- Reservations and Declaration: Article 1.

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

- No action taken.

Convention on the Elimination of all forms of Discrimination against Women

- Signed 17 July 1980; ratified 5 October 1981
- Sri Lanka's third and fourth periodic reports were submitted as one document and considered by the Committee on the Elimination of Discrimination against Women at its January 2002 session; its fifth and sixth periodic reports were due 4 November 1998 and 2002 respectively.

Optional Protocol on the Convention on the Elimination of all forms of Discrimination against Women

- Acceded: 15 October 2002.

International Convention on the Elimination of All Forms of Racial Discrimination

- Acceded: 18 February 1982
- Reservations and declarations: Article 14
- Sri Lanka's seventh, eight and ninth periodic reports were submitted as one consolidated report and considered by the Committee on Racial Discrimination at its August 2001 session; its tenth, eleventh and twelfth periodic reports were to be submitted as one document by 20 March 2005.

Convention on Consent to Marriage, Minimum Age for Marriage and Registration for Marriages

- No action taken.

Convention concerning the Minimum Age for Admission to Employment (ILO 138)

- Ratified: 11 February 2000
- Set minimum age at 14.

Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO 182)

- Ratified: 1 March 2001.

3.0 Children's Rights Review

3.1 General Overview

Sri Lanka ratified the Convention on the Rights of the Child on 12 July 1991. The country's initial report was submitted to the Committee on the Rights of the Child in February 1994. In its **Concluding Observations**, the Committee "regretted" the Government's failure to *inter alia*: Take due consideration of the provisions of article 4 of the Convention (i.e. implementation of rights); dedicate a higher portion of the national budget to the protection of the child and noted, in comparison, the high proportion of military expenditures; ensure that the Convention was of a binding nature within the national legal system; and reflect within the national legislation the general principles of the Convention, including, in particular, the principle of non-discrimination, the principle of the best interests of the child and the respect for the views of the child.⁷

The lack of efficient and integrated mechanisms to monitor the situation of children was also highlighted as a weakness by the Committee, particularly since the constitutional change described in Part 1 above gave increasing political power to the provinces. The Committee noted in this regard a lack of reliable quantitative and qualitative data, a shortage of means to implement programmes, and a lack of indicators and mechanisms to evaluate the progress and impact of policies adopted. Similarly, the Committee was distressed by the absence of coordination within the governmental departments and ministries, as well as between central and regional authorities as this appeared to be negatively effecting the implementation of global policies to promote and protect the rights of the child.⁸

The Committee was also worried about the existence of disparities concerning the three different laws (Sri Lankan, Kandyan and Muslim) regulating the minimum age for marriage. These legislations had established different minimum ages for marriage between boys and girls and authorized the marriages of girls as young as 12 years of age who have obtained parental consent. In the Committee's opinion, such situations raised the question of compatibility with the principles of non-discrimination and the best interests of the child in the Convention.⁹

7 "Concluding observations of the Committee on the Rights of the Child: Sri Lanka", UN Doc. CRC/C/15/Add.40, 21 June 1995

8 *ibid*

9 *ibid*

The Committee also expressed “concern” about the apparent persistence of discriminatory attitudes directed towards girls, children born out of wedlock, children from poorer income groups, rural children, child refugees or displaced children, working children, children affected by armed conflicts and children of overseas workers. The Committee noted that the implementation of article 12 of the Convention was markedly absent from the Government’s report, as was the strategies the country was going to employ to combat its difficulties in ensuring birth registration, particularly of children born out of wedlock. Finally, the Committee expressed its concern and the fact that the same measures adopted to safeguard against sale and trafficking of children in international adoptions had not been taken to regulate national adoptions.¹⁰

With respect to child abuse, including sexual abuse, the Committee was “seriously alarmed” by its prevalence. The Committee was worried that no specific rehabilitation measures existed for abused children and that they were being treated like delinquents. The Committee also expressed its “grave concern” with the substantial number of children working as domestic servants, who are often subjected to sexual abuse. It was “deeply worried” about the increasing number of children exploited sexually, especially young boys forced into prostitution, both locally and in international sex tourism. Corporal punishment was also prevalent in Sri Lankan society and was accepted in schools, much to the dismay of the Committee.¹¹

The Committee was also perturbed by the high level of malnutrition among children and the surprisingly high rate of suicide among youngsters. Inadequate measures taken to improve the access of displaced and refugee children to education and health services was noted by the Committee as being problematic, as was the lack of implementation of the provisions and principles of the Convention in relation to the administration of juvenile justice, in particular the low age of criminal responsibility (8 years old) and the status of children between 16 and 18 years old who are considered by penal law as adults. The high rates of school drop out, the discrepancies in education facilities, especially in rural areas, and the insufficiency of pre-school establishments which are usually managed by non-governmental institutions and are not under State responsibility was also flagged by the Committee.¹²

10 *ibid*

11 *ibid*

12 *ibid*

Finally, in reviewing Sri Lanka's initial report the Committee was pre-occupied by the large number of children affected by the armed conflict and especially those who had been displaced and those who had become orphans as a result of the war. Similarly, the Committee was worried about the hazardous provision of health services in areas affected by the armed conflict. The Committee noted with regret that the initial report of Sri Lanka did not provide comprehensive information on the effect of armed conflict on children, their involvement in the armed forces and the way the authorities handle child soldiers who are also prisoners of war.¹³

Eight years later, in the Concluding Observations of the Committee on the Rights of the Child following its review of Sri Lanka's **second periodic report**, the Committee recognized at the outset that the armed conflict and the challenges of reconstruction, particularly in the north and east, posed difficulties to the full implementation of the Convention. With this in mind, the Committee was satisfied that the various concerns that had been expressed and recommendations that had been made upon the consideration of the country's initial report in 1994 had been addressed through legislative measures and policies. The Committee was "greatly encouraged" by the ongoing peace process and the inclusion of human rights issues, including the human rights of children, in the peace talks. In particular the Committee was pleased that the state of emergency that had been in place for many years had been lifted and the Prevention of Terrorism Act had been suspended. The Committee also expressed satisfaction with the ratification of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict on 8 September 2000 and welcomed the various legislative measures aimed at improving the protection of children from domestic violence, child labour and commercial sexual exploitation. Further, the Committee welcomed the various mechanisms and programmes aimed at protecting and promoting the rights of children including, *inter alia*: Establishment of the National Human Rights Commission in 1997; establishment of the National Child Protection Authority in 1999 and provincial level committees to address problems of child abuse and sexual exploitation; and dissemination of materials, including audiovisual materials, publications and posters, to raise awareness about the Convention and child rights.¹⁴

13 *ibid*

14 "Concluding Observations of the Committee on the Rights of the Child", UN Doc. CRC/C/15/Add.207, 2 July 2003

Although the Committee was appreciative of the many efforts that had been made to date, the Committee expressed dissatisfaction that recommendations regarding, *inter alia*, harmonization of legislation, coordination of the implementation of the Convention, child participation and juvenile justice had not been given sufficient follow-up. The Committee urged the Government to make every effort to address the recommendations contained in the Concluding Observations of its initial report as well as the list of concerns contained in the Concluding Observations of their second periodic report, many of which are cited below.¹⁵

The Government of Sri Lanka has yet to follow-up on the recommendation of the Committee to harmonize its domestic law with international standards.¹⁶ However, in 2004 the Government of Sri Lanka did table a *National Plan of Action for the Children of Sri Lanka, 2004-2008*. The overall objective of the NPA is to ensure universal access to services that children require for their full and free development as well as to provide them with the opportunity to develop in a safe and enabling environment. The focus areas of the NPA are education, health, child protection, child labour, juvenile justice and water and sanitation, child abuse and exploitation, and cognitive and psychological development. The NPA gives special attention to children in conflict affected areas and relies on the cooperation of all stakeholders including government agencies, UNICEF, NGOs, the private sector, and the children themselves.¹⁷ At the time of the writing of this report no data was publicly available concerning the progress of the NPA. As noted above, the country's third and fourth periodic reports are to be submitted to the Committee as one consolidated report by 10 August 2008. The NPA will feature prominently in Sri Lanka's next country report.

3.2 Application of the CRC's Non-Discrimination Principles

In the Convention on the Rights of the Child, the right of non-discrimination is applicable to all children without any limitations or restrictions. Article 26 of the **Constitution of Sri Lanka** spells out the right of equality and non-discrimination on all grounds except one: disability. Further, the right of non-discrimination has been restricted in the Constitution to "citizens". Article 12 (2) of the Constitution permits discrimination on

15 *ibid*

16 Communication between UNICEF country office in Colombo and the International Bureau for Children's Rights in Montreal, 19 April 2006

17 Mr. B. Abeygunawardana, Director General, National Planning Department, Ministry of Finance and Planning, "National Plan of Action for the Children of Sri Lanka", a background paper for the Sri Lanka Development Forum 2005

the basis of language as regards employment (this may be applicable to children over 16 years) although the right of non-discrimination is made applicable to every human being in Article 12 (3) of the Constitution in specified categories of situations (i.e., access to shops, hotels etc.). Article 12 (4) of the Constitution does permit affirmative action on behalf of three categories: women, children, and disabled persons and thereby action by the legislature or the executive in taking such steps would not be construed as discrimination. Some of the fundamental rights ensured in Chapter III of the Constitution apply to all persons while some of them are restricted to citizens only.¹⁸

Sri Lankan law treats “**legitimate**” and “**illegitimate**” children slightly differently and the Constitution does not prohibit discrimination on the basis of birth. As a general rule, an illegitimate child may only inherit on the intestacy of his or her mother. Some civil society groups have suggested a need to equate the lot of illegitimate and legitimate children as birth outside marriage still carries a great stigma.¹⁹

As cited in Part 1 above, there has been progress in the area of child survival. Yet, national averages do not indicate uniformity of trends and **disparities exist among different socio-economic and occupational groups, as well as geographically**. As expressed by the NGO Forum on the Rights of the Child in its alternative report to the country's initial submission to the Committee on the Rights of the Child, “there are large numbers of specially disadvantaged and vulnerable groups who have not had access to, or been neglected by, some of the development processes and welfare measures implemented for the benefit of children.”²⁰

In reviewing the country's second periodic report, the Committee on the Rights of the Child was also concerned that the general principles of non-discrimination were not fully articulated in Sri Lankan legislation and administrative and judicial decisions, as well as in policies and programmes relevant to children at federal, provincial and local levels and in conflict-affected areas. The Committee recommended that the Government integrate, in an appropriate manner, the general principles of the Convention, namely articles 2, 3, 6 and 12, in all relevant legislation concerning children and apply them in all political, judicial and adminis-

18 Taken from the official website of the Government of Sri Lanka, 'The Constitution of Sri Lanka', accessible on-line at <http://www.priu.gov.lk/> (last accessed: 21 January 2006)

19 “Supplementary Report to the Initial Report of the State Party of Sri Lanka on the Implementation of the Convention on the Rights of the Child”, NGO Forum on the Rights of the Child, November 1994

20 *ibid*

trative decisions, as well as in programmes, services and reconstruction activities which have an impact on all children.²¹ As of the writing of this report, the Government has not acted upon this recommendation.²²

In addition to “legalized discrimination” the Committee also noted with concern that **societal discrimination** persists against vulnerable groups of children, including children with disabilities, adopted children, children displaced by conflict, children infected with and affected by HIV/AIDS, and children of ethnic and religious groups. The Committee recommended that the Government amend its legislation and increase its efforts to ensure the implementation of existing laws guaranteeing the principle of non discrimination and full compliance with article 2 of the Convention, and adopt a proactive and comprehensive strategy to eliminate discrimination on any grounds and against all vulnerable groups. The Committee also requested that specific information be included in the next periodic report (due in 2008) on the measures and programmes relevant to the Convention to follow up on the Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.²³

With respect to **children with disabilities**, it is interesting to note that in a review of the Government's first periodic report, one of the NGOs working in Sri Lanka publicly noted that the Government's materials did not include other categories of disabled children, such as the learning disabled and the emotionally impaired in its definition of the disabled.²⁴ With respect to the quality of education between disabled and non-disabled children, although integrated education is taking place, civil society groups have commented on the limited resources and insufficient personnel that have kept the Special Education Units running in low key. Similarly, the Government has been criticized for not providing enough resources into the early intervention programme to educate parents and family members. Health professionals/authorities, though expected to help parents seek special medical assistance for their children, have met with limited success.²⁵

21 UN Doc. CRC/C/15/Add.207, 2 July 2003

22 Communication between UNICEF country office in Colombo and the International Bureau for Children's Rights in Montreal, 19 April 2006

23 UN Doc. CRC/C/15/Add.207, 2 July 2003

24 “Supplementary Report to the Initial Report of the State Party of Sri Lanka on the Implementation of the Convention on the Rights of the Child”, NGO Forum on the Rights of the Child, November 1994

25 UN Doc. CRC/C/15/Add.207, 2 July 2003

3.3 Application of the CRC's Best Interest of the Child Principles

Almost 20 years of civil conflict have had an extremely negative impact on the implementation of the “best interest of the child” principles of the CRC in Sri Lanka. While recognizing that children will greatly benefit from the peace process, concern has been expressed by civil society and inter-governmental agencies alike that during the transition to peace and the reconstruction process, children who have been affected by the conflict remain a particularly vulnerable group.

The Committee on the Rights of the Child, after reviewing Sri Lanka's second periodic report, recommended that the Government implement a plan of action for the respect and promotion of the rights of children during the reconstruction process. In particular, the Committee recommended that the State Party prioritize the demobilization and reintegration of all combatants under 18 and ensure that all armed groups reintegrated into the national armed forces adhere to the minimum age of recruitment of 18 years. As well, the Committee encouraged the Government to develop, in collaboration with NGOs and international organizations, a comprehensive system of psychosocial support and assistance for children affected by the conflict, in particular child combatants, unaccompanied internally displaced persons and refugees, returnees and landmine survivors. Guaranteeing that children affected by conflict can be reintegrated into the education system – including through the provision of non-formal education programmes and by prioritizing the rehabilitation of school buildings and facilities – was noted by the Committee, as was the need for water, sanitation and electricity in conflict-affected areas.²⁶

The Committee on the Rights of the Child, while acknowledging the various legislative measures taken to implement the Convention in Sri Lanka, has nevertheless expressed concern at the lack of a comprehensive and systematic review of existing laws, including the different sets of personal laws, with the aim of bringing them into conformity with the Convention and ensuring the best interest of the child principle is present. The Committee therefore recommended that the country undertake such an exercise.

3.4 Application of the CRC's Child Development Principles

With respect to **health care**, the Sri Lankan NGO Forum on the Rights of the Child has stated that there is overcrowding at the centre of the island due to lack of adequate and satisfactory curative medical care at the

26 *ibid*

periphery. Moreover, private medical practice has always played a significant role and in the cities it increasingly does so. This can in part be attributed to the perceived decline in standards of the State services. The NGO has further stated, "Regarding the expanded immunization programme which according to government reports has been an 'outstanding success' the question is often posed whether this is only a total first year coverage of 88.5%. Moreover it is a country average and there are indications that in some areas the year coverage was much less." On circumstantial evidence from the State of the cold chain alone it seems highly unlikely that coverage is adequate in some districts. Reporting from the conflict areas is not sufficient to pick up gradual trends in the pattern of targeted diseases.²⁷

Although the Government of Sri Lanka has admitted that the levels of child malnutrition remain quite high, some groups working inside the country state that the situation is actually much worse than the Government admits, particularly in disadvantaged locations/population groups. Studies by independent NGOs seem to suggest compounded adverse influences of nutritional deficiencies on children in the lower and middle socio-economic strata.²⁸

While acknowledging the improvements in mortality rates and immunization coverage, the Committee on the Rights of the Child has expressed concern at the high levels of child malnutrition, the significant proportion of children born with low birth weight, the prevalence of mosquito-borne diseases, including malaria, and the lack of access to safe drinking water and sanitation, particularly in conflict-affected areas. After reviewing its second periodic report, the Committee recommended that the Government ensure universal access to maternal and child health-care services and facilities throughout the country with special attention to conflict-affected areas, and prioritize the provision of drinking water and sanitation services in reconstruction activities. Strengthen ongoing efforts to prevent malnutrition, malaria and other mosquito-borne diseases, while continuing to promote exclusive breastfeeding for an infant's first six months, was also encouraged by the Committee.²⁹

With reference to **education**, again some civil society groups have suggested that the initial Government report submitted to the Committee on

27 "Supplementary Report to the Initial Report of the State Party of Sri Lanka on the Implementation of the Convention on the Rights of the Child", NGO Forum on the Rights of the Child, November 1994

28 *ibid*

29 UN Doc. CRC/C/15/Add.207, 2 July 2003

the Rights of the Child had statistical anomalies regarding accuracy and omissions. For example, the gross enrolment rates cited above in Part 1 are given as indicators of educational participation. These rates, according to some of the civil society groups operating in the country, do not reflect the actual situation and do not use age specific participation rates to ascertain the percentage of children in each age group who are denied access to education. Inter-district and intra-district disparities in the provision of education particularly at senior secondary level and in school facilities continue to be major barriers to equal educational opportunity. The need for the removal of these barriers has been noted. According to some, attention has been focussed in the recent past on strengthening “National Schools” of the privileged and not on reducing disparities.³⁰

In reviewing the country's second periodic report, the Committee on the Rights of the Child was concerned that a significant number of children with disabilities, in particular girls, are not able to attend school, that not all special schools managed by NGOs are registered by the Ministry of Education, and the schools that do exist are concentrated in the more developed and urbanized Western Province. In light of the recommendations of the Committee's day of general discussion on the private sector as service provider and its role in implementing child rights in 2002, the Committee recommended that the Government of Sri Lanka ensure that all children with disabilities, particularly girls, have access to education by increasing spending and expanding special education programmes, including non-formal special education in rural areas, and by training teachers in mainstream education about special needs. The Government was also encouraged to register and monitor all special schools run by non-State actors and take all necessary measures to integrate children with disabilities into society while including them in cultural and leisure activities.³¹

The Committee had stated that it was encouraged by the education reforms initiated by the Government in 1999, which focussed on improving the quality of education and also emphasized early childhood development. At the same time, the Committee was concerned that all principals, teachers and parents, particularly in rural areas, were not fully aware of the objective of these reforms, that their implementation was not uniform across all regions and that there was no mechanism for monitoring and evaluating their implementation. In light of articles 28, 29 and 31 of the

30 “Supplementary Report to the Initial Report of the State Party of Sri Lanka on the Implementation of the Convention on the Rights of the Child”, NGO Forum on the Rights of the Child, November 1994

31 UN Doc. CRC/C/15/Add.207, 2 July 2003

Convention, as well as general comment No. 1 on the aims of education, the Committee recommended that Sri Lanka ensure that primary education is in fact free and compulsory for all children. The Government was also encouraged to provide additional information on the reforms and adequate material resources for their implementation to principals, teachers and parents in rural and conflict-affected areas. The establishment of a participatory mechanism for monitoring and evaluating the implementation of the education reforms which involves principals, teachers, parents and students was seen as a necessary component of any such strategy, as was ensuring that there are a sufficient number of trained teachers in rural and conflict-affected areas.³²

With respect to both health and education, the Committee expressed “great concern” that the expenditures for education and health as a percentage of the country’s GDP decreased between 1998 and 2001. The Committee was further concerned at the lack of disaggregated data on budgetary allocations for the implementation of children’s rights at the national and district levels. The Committee recommended that the Government pay particular attention to the full implementation of article 4 of the Convention by prioritizing budgetary allocations to ensure implementation of the economic, social and cultural rights of children, in particular those in conflict-affected areas, “to the maximum extent of... available resources and, where needed, within the framework of international cooperation”. The Government was advised to prioritize the provision of services to children in loan and structural adjustment negotiations with international donors and collect, and include in the regular budget, disaggregated data on the expenditures for children according to the various areas of the Convention, such as foster care, institutional care, primary and adolescent health care, pre-school, primary and secondary education and juvenile justice.³³

In Sri Lanka there is increasing evidence of **child abuse**. The National Child Protection Authority of Sri Lanka (NCPA) is responsible for child welfare matters. Its mandate includes a broad range of authority, objectives and duties, such as formulating policies related to child abuse and exploitation, the therapy and rehabilitation of children who are victims of such abuse, co-ordination of the many groups and agencies involved in combating abuse, including NGOs, monitoring research and resource mobilization. According to the NCPA, approximately 4,000 complaints of child abuse are reported annually, making child abuse the top criminal

32 *ibid*

33 UN Doc. CRC/C/15/Add.207, 2 July 2003

offence committed in 2000. Close to 1,000 of these cases included physical torture, sexual abuse and trafficking.³⁴

In reviewing the country's second periodic report, the Committee on the Rights of the Child noted that, although there is limited data available, the problem of abuse within the family and in institutions appeared widespread. The Committee was further concerned that victims of abuse do not receive adequate assistance and support for their recovery, and that the practice of institutionalizing victims while their case is being processed is common. The Committee therefore recommended that the Government expand its efforts to address the problem of child abuse, including through the adoption and implementation of a Domestic Violence Act, while at the same time ensuring that there is an effective national system for receiving, monitoring and investigating complaints and, when necessary, prosecuting cases, in a manner which is child-sensitive and ensures the victims' privacy. The Government was also advised that victims of violence should have access to counselling and assistance with recovery and reintegration. The provision of adequate protection to child victims of abuse in their homes, whenever possible, through restraining and removal orders against the alleged perpetrator in cases where the removal of the child is necessary, was also encouraged by the Committee. Preference being given to foster care or similar family-type settings was also encouraged; institutionalization should be used only in exceptional cases.³⁵

Since the publication of the Committee's Concluding Observations the Domestic Violence Act has become law. However, the Government has not tabled any plans to establish a national system for investigating complaints and, when necessary, prosecuting child abuse cases.³⁶

According to the National Survey on **Child Labour**, conducted in 1999, 926,037 children living in Sri Lanka were "economically active". However, this number included children who were involved in some form of economic activity while also attending school or some other educational institution; as many as 234,618 of them (nearly 26%) were engaged in an economic activity while not attending school or any other educational institution. In a survey conducted by the International Labour Organization (ILO), 52% (or 475,531) of all working children in Sri Lanka

34 ECPAT International, CSEC Database, accessed 20 January 2006

35 UN Doc. CRC/C/15/Add.207, 2 July 2003

36 Communication between UNICEF country office in Colombo and the International Bureau for Children's Rights in Montreal, 19 April 2006

in 1999 were aged under 15 years. The majority of the children engaged in economic activity were boys (62.3%). Furthermore, 95% of the working children resided in rural areas. Nearly 60% of all working children were reported to be working as agricultural workers. Among the children working in the urban sector, the most dominant occupations were classified under the category of “shop sales persons and demonstrators”. The number of child domestic labourers was estimated to be 19,111, of which a majority were girls from rural areas.³⁷

Poverty at the household level is considered as one of the primary reasons for the prevalence of child labour in Sri Lanka. It is estimated that about one-fifth of the population lives below the poverty line. Research has shown that despite improvements in primary school enrolment, school dropouts at an early stage come from poor families. Recent studies suggest the figure of such dropouts at 60,000. Lack of basic necessities such as food, clothing, school stationery, and bus fare; lack of support and guidance from parents; parents' attitude towards education, and the relevance of the formal education system are all common reasons for children leaving school at an early age. Furthermore, many children, particularly girls, are forced to stay home caring for their younger siblings at the expense of their schooling. Those who drop out of school often find their way into the child labour market.³⁸

With respect to child labour, after reviewing the Government's second periodic report, the Committee on the Rights of the Child welcomed Sri Lanka's ratification of ILO Conventions Nos. 138 and 182 in 2000 and 2001, respectively. Nevertheless, it remained concerned at the high proportion of children, including very young children, working as domestic servants, in the plantation sector, on the street and in other parts of the informal sector. The Committee recommended that the Government continue its efforts to eliminate child labour, in particular by addressing the root causes of child economic exploitation through poverty eradication and access to education, as well as by developing a comprehensive child labour monitoring system in collaboration with NGOs, community based organizations, law enforcement personnel, labour inspectors and International Labour Organization's (ILO) International Programme on the Elimination of Child Labour (IPEC).

37 “Child Labour and Responses in South Asia, Sri Lanka”, International Labour Organization, International Programme on the Elimination on Child Labour, 2005

38 *ibid*

With reference to the **commercial sexual exploitation of children**, in its first alternative report to the Committee on the Rights of the Child, the NGO World Organization against Torture (OMCT/SOS-Torture) expressed its concern at the diversity of ages of consent to marriage and noted that girls are eligible for marriage at a much earlier age. The report states dissatisfaction with section 364(A) 3 of the Penal Code, which stipulates that, "Sexual intercourse by a man with his own wife, or between a man and a girl who are living together as husband and wife with the consent of the parents or guardian of the girl, shall not be an offence under this section if the girl is of, or above the age of twelve years". The report noted that this section may constitute a legal pretext for child prostitution especially when the consent needed is the consent of the legal guardian, who could be induced to sell his or her child into this trade because of economic considerations.³⁹

According to the Thailand-based NGO, ECPAT International (End Child Prostitution, Pornography and Trafficking), commercial sexual exploitation of children in Sri Lanka is a significant problem, particularly child prostitution and child sex tourism, with most attention paid to the latter. Unlike other countries in the region, male child prostitution seems far more common than female child prostitution. Though the Sri Lankan Government's response has been better than in neighbouring countries, NGOs complain that the Government has not been responsive enough to the issue. Recently, the Government has taken some positive steps, mostly in the area of protection. The NGO community is active with respect to preventive and rehabilitation measures. Relevant NGOs/alliances include Protecting Environment and Children Everywhere (Peace), the UNICEF Alliance, Child Right Group, NGO Forum of Sri Lanka, the Monitoring Committee for the Convention of the Rights of the Child, the Committee of the Unprotected Child, the Presidential Task Force against Child Abuse, and the National Committee for the Elimination of Child Labour. Activists seem particularly disappointed by the lack of public outcry from parents, the local community and regional leaders; suspicions have been voiced that their hesitancy may stem from a fear of losing the income generated by the tourists. Others have suggested that the reluctance is due to a sense of fatalism: if a child enters prostitution, it is their karma. Efforts to combat the issue are hampered by lack of resources arising from war and economic problems. It is believed that the prolonged conflict in Sri Lanka has diverted necessary law enforcement personnel

39 OMTC/SOS-Torture, "Sri Lanka Report for the Committee on the Rights of the Child 1995", May 1995

and other resources away from child protection.⁴⁰ The UN Special Rapporteur on the sale of children, child prostitution and child pornography has also highlighted the continuing lack of diligence and willingness on the part of the police to conduct pertinent investigations into allegations of ill-treatment.⁴¹

In assessing the country's second periodic report, the Committee on the Rights of the Child welcomed the Penal Code (Amendment) Act No. 22 of 1995, which sought to protect children from commercial sexual exploitation. However, it was concerned that existing legislation was not effectively enforced and that child victims of sexual exploitation did not always receive adequate recovery assistance. The Committee recommended that the State party develop a National Plan of Action on Commercial Sexual Exploitation of Children, as agreed at the first and second World Congresses against Commercial Sexual Exploitation of Children in 1996 and 2001. In particular, the Committee noted the need to train law enforcement officials, social workers and prosecutors on how to receive, monitor, investigate and prosecute complaints in a child-sensitive manner that respects the privacy of the victim. The Government was encouraged to prioritize recovery assistance and ensure that education and training, as well as psychosocial assistance and counselling, are provided to victims, while at all times ensuring that victims who cannot return to their families are not institutionalized. The Committee also recommended that Sri Lanka ratify the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.⁴²

As noted in Part 2 above, Sri Lanka has yet to ratify the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. However in 2001 the Sri Lankan Government prepared a *National Plan of Action to Combat Trafficking of Children* and the ILO has also established a domestic Anti-Trafficking Project.⁴³ At the time of the writing of this report no data on the progress of this Plan or the ILO Project was publicly available.

From 1983 until 2002, Sri Lanka had suffered from a civil war between the Government's armed forces, which belonged to the Sinhalese

40 ECPAT International, CSEC Database, accessed 20 January 2006

41 "Sale of Children", UN Doc. E/CN.4/2005/78/Add.3, 8 March 2005

42 "Concluding observations: Sri Lanka", UN Doc. CRC/C/15/Add.207, 2 July 2003

43 "Country Reports on Human Rights Practices 2004 - Sri Lanka" United States State Department, 2004

majority, and the Liberation Tigers of Tamil Eelam (LTTE), a separatist insurgency allegedly representing the Tamil minority. In 2002 a formal ceasefire agreement between the LTTE and the Government put a temporary end to the war. In 2003, the LTTE withdrew from the peace negotiations and in 2004 fighting resumed between rival factions of the LTTE. The assassination of the Minister of Foreign Affairs in 2005 demonstrates that violence is still a major concern in Sri Lanka.⁴⁴ This armed conflict has impacted on the development of the country's children. Sri Lanka insists that its armed forces only recruit soldiers on a voluntary basis and the minimum age is 18 years. However, the LTTE has been accused of using **child soldiers**. In 2003, the LTTE and the Sri Lankan Government, in cooperation with UNICEF, agreed on a **Plan of Action for Children affected by the War**. This Plan included a commitment by the LTTE to end all child recruitment and to release any children from its forces. Since this agreement, the LTTE has formally released children to UNICEF; however, it has reportedly recruited and re-recruited more.⁴⁵

In the **Millennium Development Goals** country report for Sri Lanka, several of the Government's successes, as well as its current challenges, are outlined. Although Sri Lanka appears to have had successes in the improvement of non-income poverty, its success with regard to reducing income poverty is less clear. In 2005, 23% of the population was lying below the national poverty line. Given this challenge, the country is presently following a pro-poor, pro-growth development strategy towards poverty reduction.⁴⁶

In reviewing the MDG report it appears that Sri Lanka is already on track in achieving some of its targets for social indicators. The net enrolment ratio and retention rates in primary education, and literacy rates, for example, are all above 95%. The Government's role has been crucial in ensuring that all children within the 5-14 age-grouping are in school. However, there are still children from marginalised groups who are out of the schooling system. The challenge remains in ensuring that these students are brought into the system. In addition to new targets, such as increas-

44 "Country Summaries: Sri Lanka", Human Rights Watch, January 2005

45 "Global Report 2004", Coalition to Stop the use of Child Soldiers, 2004; "Living in Fear: Child Soldiers and Tamil Tigers in Sri Lanka", Human Rights Watch, November 2004. According to the UNICEF country office in Colombo, the government has indeed been demobilizing and reintegrating combatants under 18; Communication between UNICEF country office in Colombo and the International Bureau for Children's Rights in Montreal, 19 April 2006

46 "Sri Lanka's Millennium Development Goals: A Progress Report", National Council for Economic Development of Sri Lanka, 2005

ing the quality of education, teacher training and the development of infrastructure facilities should be in place to further develop this sector.⁴⁷

Sri Lankan women have a relatively better status than women in many other developing countries but have yet to achieve gender equality and empowerment in consonance with international norms. The confluence of positive social policies, slow economic growth and consequent persistent poverty among segments of the population, armed conflict, and engendered social norms have contributed to uneven development that impinges on the quality of life of women.⁴⁸

In terms of infant mortality and under-5 mortality, rates have shown a declining trend over the years. The challenging task ahead will be to reduce prenatal and neonatal mortality, which are generally linked to the mother's health and nutrition status during pregnancy.⁴⁹

Sri Lanka is an island endowed with many natural resources. However with industrialisation and commercialisation of products and services, the harmony between the environment and humans has been greatly impaired. The major environmental issues faced include land degradation, deforestation, loss of biodiversity, air pollution, declining availability of fresh water, degradation of marine and coastal habitats and inadequacy in solid waste disposal measures. Civil society groups have indicated that policies and programmes need to be set in place to ensure environmental sustainability.⁵⁰

Sri Lanka's commitment to achieve the MDGs by 2015 is a commitment to change. A challenge in achieving all of its objectives is the regional differences in MDG achievement. A greater part of the country's wealth and economic activity is located in the Western Province. Poverty is concentrated in rural areas and performance in health, education, access to water and sanitation differs greatly between districts. Achieving the MDGs requires recognition of the right of everyone to development and making it a priority to improve the situation for the poor and vulnerable, based on the simple principle of needs.⁵¹

47 *ibid*

48 *ibid*

49 *ibid*

50 "Sri Lanka's Millennium Development Goals: A Progress Report", National Council for Economic Development of Sri Lanka, 2005

51 *ibid*

3.5 Application of the CRC's Child Participation Principles

According to the NGO Forum on the Rights of the Child, the context of some of the traditions, norms and customs and religious beliefs prevalent in the country appears to conflict with the right of a child to participation, including the freedom of choice, thought and expression. There is a grey area of actual implementation of laws and statutes, however welcome and relevant they may be.⁵²

In reviewing the second periodic report for Sri Lanka, the Committee on the Rights of the Child has noted a plan for constitutional reform in which the child is defined as a person below the age of 18. This would broaden the capacity of children to participate in many areas of citizen diplomacy. Yet, the Committee was concerned that there are various legal minimum ages which seem to be discriminatory or set too low. The Committee therefore recommended that the Government enact, as soon as possible, a clear legal definition of the child applicable throughout the country and review existing age limits in various areas, including marriage, child labour and the Penal Code provisions on child sexual abuse, in order to bring them into compliance with international standards.⁵³ The Government has yet to act upon these recommendations.⁵⁴

3.6 Application of Other Principles Worthy of Note

In the area of **juvenile justice**, one of the sentencing options available for male young offenders is corporal punishment in the form of infliction of not more than 6 strokes with a light cane. Although the Convention itself does not explicitly prohibit corporal punishment, this practice is in violation of the Article under reference, Article 3.1 (i.e., best interests of the child), 24.3 (i.e., traditional practices harmful to health) and is in conflict with the provisions of the UN Declaration of the Protection of All Persons from Torture or other Cruel, Inhuman and Degrading Treatment or Punishment and the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).

In its alternative report to the country's first report to the Committee on the Rights of the Child, OMTC/SOS-Torture articulated several pressing concerns in the area of juvenile justice, none of which appear to have

52 "Supplementary Report to the Initial Report of the State Party of Sri Lanka on the Implementation of the Convention on the Rights of the Child", NGO Forum on the Rights of the Child, November 1994

53 UN Doc. CRC/C/15/Add.207, 2 July 2003

54 Communication between UNICEF country office in Colombo and the International Bureau for Children's Rights in Montreal, 19 April 2006

been addressed at the time of the writing of this report. In particular the OMTC/SOS-Torture reports notes, *inter alia*: Low age of criminal responsibility set at 8; the presumption that children above 8 understand the nature and consequence of the crime and are therefore subject to all the same criminal penalties as adults, with the exclusion of the death penalty; lack of specified time limits for children inside the juvenile justice system; the jurisdiction of the Youth Courts and the lack of clarity regarding transfers to a higher court; and the lack of provision for legal representation of children.⁵⁵

The Committee on the Rights of the Child, in response to the Government's second periodic report, was also concerned with the minimum age of criminal responsibility and that children between the ages of 16 and 18 are considered by penal law as adults. The Committee recommended that the Government ensure the full implementation of juvenile justice standards and in particular articles 37, 39 and 40 of the Convention, as well as the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the UN Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), and in the light of the Committee's 1995 day of general discussion on the administration of juvenile justice, amend the Children and Young Person's Ordinance (1939) to raise the minimum age of criminal responsibility to an internationally acceptable level to ensure that all offenders under 18 are treated as children. The Government was advised to set up a system of juvenile courts across the country, and to ensure that deprivation of liberty is used only as a last resort and for the shortest appropriate time period. The country was also requested to take effective measures, including, where appropriate, the enactment of legislation, to implement the recommendations of the Law Commission on the juvenile justice system, in particular those regarding access to legal assistance, training of professionals working with children, separation of children in conflict with the law from adults at all stages.⁵⁶ The Government has yet to act on any of these recommendations.⁵⁷

The Committee stated that it was "deeply concerned" that male child offenders could be sentenced to whipping or caning under the Corporal Punishment Ordinance of 1889, and that the Education Ordinance of

55 "Sri Lanka Report for the Committee on the Rights of the Child 1995", OMTC/SOS-Torture, May 1995

56 UN Doc. CRC/C/15/Add.207, 2 July 2003

57 Communication between UNICEF country office in Colombo and the International Bureau for Children's Rights in Montreal, 19 April 2006

1939 permits corporal punishment to be used as a disciplinary measure for boys and girls in schools and that many teachers and principals consider corporal punishment to be an acceptable form of discipline. The Committee reiterated its previous recommendation that the State Party repeal the Corporal Punishment Ordinance of 1889 and amend the Education Ordinance of 1939 to prohibit all forms of corporal punishment. Furthermore, the Committee recommended that the State party undertake well-targeted public awareness campaigns on the negative impact corporal punishment has on children, and provide teacher training on non-violent forms of discipline as an alternative to corporal punishment.⁵⁸ According to information from the UNICEF country office in Colombo, the final recommendation (i.e., public awareness campaigns) has been endorsed by the Government through the establishment of guidance and counselling units in schools.⁵⁹

4.0 Overall Assessment⁶⁰

Sri Lanka has had a turbulent history. The country's first settlers were the nomadic Veddahs, who were conquered by the Sinhalese around the 5th or 6th century BC. Repeated invasions from southern India over the next 1,000 years left Sri Lanka in an ongoing state of dynastic power struggle. The Portuguese arrived in Colombo in 1505 and gained a monopoly on the invaluable spice trade. By 1597, the colonisers had taken formal control of the island. The British arrived in 1796 and became the first European power to rule the entire island. Then known as Ceylon, Sri Lanka finally achieved full independence in 1948. The Government adopted socialist policies, but promoted Sinhalese interests, making Sinhalese the national language and effectively reserving the best jobs for the Sinhalese, partly to address the imbalance of power between the majority Sinhalese and the English-speaking, Christian-educated elite. This prompted the Tamil Hindu minority to press for greater autonomy in the main Tamil areas in the north and east. The country's ethnic and religious conflicts escalated as competition for wealth and work intensified. When Bandaranaike was assassinated in 1959 trying to reconcile the two communities, his widow, Sirimavo, became the world's first female Prime Minister. She continued her husband's socialist policies, but the

58 UN Doc. CRC/C/15/Add.207, 2 July 2003

59 Communication between UNICEF country office in Colombo and the International Bureau for Children's Rights in Montreal, 19 April 2006

60 Historical data for this section was collected from the government of Sri Lanka Website as well as M. Roberts, *Exploring Confrontation: Sri Lanka: Politics, Culture and History (Studies in Anthropology and History)*, Routledge Press, 1st edition, 1995

economy went from bad to worse. A Maoist revolt in 1971 led to the death of thousands. One year later, the country became a republic and made Sri Lanka its official name.

In 1972 the Constitution formally made Buddhism the country's primary religion, and Tamil places at university were reduced. Subsequent civil unrest resulted in a state of emergency in Tamil areas. Sinhalese security forces faced off against Tamils, who began the fight for an independent homeland. Jayewardene was elected in 1977 and promoted Tamil to the status of a "national language" in Tamil areas. He also granted Tamils greater local government control, but violence escalated yet again. When the LTTE secessionists massacred an army patrol in 1983, Sinhalese mobs went on a two-day rampage, killing several thousand Tamils and burning and looting property. This marked the point of no return. Many Tamils moved north into Tamil-dominated areas, and Sinhalese began to leave the Jaffna area. Tamil secessionists claimed the northern third of the country and the eastern coast. They were clearly in the majority in the north but proportionately equal to the Sinhalese and Muslims in the east. The violence continued.

By 1985, there were internal refugees, Tamil exiles in India, no tourism, slumping tea prices and dwindling aid (because of alleged human rights abuses). Government gains in 1987 led to Tamil unrest in India, prompting concerns of an Indian invasion. The two Governments agreed that the Sri Lankan Army would retreat and an Indian Peace Keeping Force (IPKF) would maintain order in the north and disarm the Tigers. The agreement led to Sinhalese and Muslim riots in the south over the government perceived sell-out and the Indian "occupation". Sri Lanka became a quagmire of inescapable violence. A 1989 Sinhalese rebellion broke out and the country was at a standstill. The IPKF withdrew in 1990. The Tigers had agreed to a ceasefire but violence flared almost immediately when a breakaway Tamil group unilaterally declared an independent homeland.

Prime Minister Gandhi was assassinated by a Tamil suicide bomber in 1991 and Premadasa suffered the same fate in 1993. Kumaratunga became Prime Minister in 1994 and President in 1995, and for the second time her mother Sirimavo Bandaranaike became Prime Minister. In early 1995, the Tamils broke a truce and the Government responded with a military operation that seemed to put Sri Lanka on the path to peace. But the Tigers regrouped and, by mid-1996, had launched damaging attacks on government troops stationed in northern Sri Lanka and terrorist

strikes in Colombo. The massacre in mid-October 2000 of 26 unarmed Tamil prisoners by a crowd of Sinhalese in the hill country town of Bandarawela resulted in violent demonstrations and retaliatory attacks.

Kumaratunga won a second term in office in December 1999. Days before the vote, the President and People's Alliance coalition leader was the target of a LTTE suicide bomb attack in which she lost sight in one eye. In December 2001, Wickramasinghe, who lost the 1999 elections, became Prime Minister when the United National Party swept parliamentary elections. This could have led to deadlock between Parliament and the executive in dealing with high inflation, high unemployment, poor infrastructure and, of course, the 18-year-old civil war, but unexpectedly promising peace talks with the LTTE have facilitated cooperation in the political process. Peace talks brokered by a Norwegian delegation inspired a one-month cease-fire beginning 24 December 2001 (the first in seven years), renewed in January 2002. With the lifting of a seven-year-old embargo on LTTE-controlled territory, it seemed peace was finally at hand. But the peace process stalled in 2003, and fears that it may collapse entirely were raised in mid-2004 when a suicide bomber blew herself up in a Government building in Colombo.

The December 2004 tsunami mauled a shocking 80% of Sri Lanka's coastline. Thousands of people lost their lives in the disaster and homes were either completely or partially destroyed. The national and international aid response was tremendous, and in the months that followed debris was cleared, the massive displaced population provided with temporary shelter, and disease outbreaks avoided. Social Care Centres at the divisional level were established to provide integrated social care and social work for children and their families. Currently, there are more than 350 such centres throughout the country.⁶¹ Though permanent reconstruction has been a much slower process and political problems have hampered aid distribution to the LTTE held north, only now is Sri Lanka getting back on its feet.

As a result of the above, the rights of Sri Lankan children have been compromised. Whichever Government has been in power has had to prioritize the safety of its citizens above all else. It is therefore not surprising that the UNICEF country office in Colombo has highlighted the lack of effective procedures for the establishment of social programmes to provide necessary support for children and for those who have the care of

61 Communication between UNICEF country office in Colombo and the International Bureau for Children's Rights in Montreal, 19 April 2006

children, as well the limited number of programmes for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment, as being of great concern.⁶² In reviewing the recent material produced by the NGO community, the intergovernmental agencies (including UNICEF and the Committee on the Rights of the Child), and reports from the Government itself, it appears that the second priority for the current Government is the welfare of its vulnerable population, including its children. Despite the challenges described throughout this report, the educational and health sectors have consistently been maintained, as evidenced by the high literacy rates and low infant and child mortality rates. That being said, given the limited resources left to the Government after budgeting for its military, security and defence, the focus of the educational and health initiatives have largely been placed on the urban centres. The Government itself acknowledges the difficulty in expanding its reach, particularly in the areas that have been traditional conflict zones.

In addition to the factors that have had a direct impact on the situation of children in Sri Lanka, the country's difficulties with man-made and natural disasters have resulted in causal consequences for its child population. Given Sri Lanka's historical mix of races and religions discrimination has evolved over the years, although the targets of the discrimination have differed depending on the group that was holding the power balance at the time. The internal conflicts have also resulted in the use of child soldiers by para-military and rebel groups. The influx of regional tourism has led to an increase in children being sexually exploited. Finally, the recent tsunami has created a pool of vulnerable and orphaned children susceptible to potential violations from the State and abuse-intent adults. These factors, and their combined effects on the society, would be challenging to overcome for any Government, let alone one that is as financially poor as Sri Lanka.

There are several problems that the Government of Sri Lanka can address immediately with minimal cost implications. If nothing else, these modifications would send a clear message domestically and internationally that children's rights have now gained greater importance in government policy planning. First, the Government can repeal the laws which permit, and on occasion appear to condone, corporal punishment at home, in the school system and in institutions. Second, the Government can repeal all legislation that violates a child's rights while she or he is in detention and

62 *ibid*

on trial, including making amendments so that physical punishments for criminal offences are banned and the age for criminal responsibility (which is uncommonly low) is raised. Third, the Government can include disability as a prohibited ground of discrimination in its Constitution and subordinate legislation. Not only will these changes immediately improve the circumstances of Sri Lankan children, they will also demonstrate to its adult citizens the need to protect children, while protecting their rights as well. The Government must lead by example in this regard.

To its credit, the current Government of Sri Lanka recognizes the obstacles the lie in its path to peace and prosperity, and it has started to develop plans (i.e., *National Plan of Action for the Children of Sri Lanka, 2004-2008* and its MDGs) to combat these obstructions. It remains to be seen if the country can find the resources to ensure that its plans materialize. This will require careful economic strategizing, while ensuring that children do not suffer the repercussions of fundraising efforts (i.e., sex tourism and child labour). From an outsider's point of view, the resolution for many of the children's rights issues elucidated in this report would be to redirect the large percentage of the country's budget from the military and defence to social programmes, particularly those that have positive consequences for children, children in rural communities and in especially difficult circumstances being given preference. This will only be possible if the country remains stable enough for its population and Government to gain greater confidence in themselves and their nation.



Children's Rights Profile on Timor Leste



1.0 Introduction

1.1 Country Overview

Timor Leste (East Timor) is an independent sovereign State occupying the eastern half of the island of Timor together with two smaller islands and an enclave, Oecusse, on the northern coast of the Indonesian western half of the island. The capital city is Dili. The population is predominantly indigenous and Catholic Christian, although with a strong animist influence, with an Indonesian Muslim minority, reflecting the period of Indonesian occupation. Most of the large Indonesian population that came to Timor Leste during the quarter century occupation fled during the upheaval in the second half of 1999. There is also a small minority of Portuguese descent. The population is young, overwhelmingly rural and extremely poor. The territory is mountainous, making transport, communications and the provision of services difficult.

Timor Leste's history has been one of tragedy for centuries. Four centuries of Portuguese colonisation brought little that was positive. During a quarter century of Indonesian occupation an estimated 100,000 people lost their lives directly or indirectly through starvation and disease.¹ Months of chaos, destruction of infrastructure and property, forcible deportations and death accompanied Indonesia's final forced withdrawal in 1999. The United Nations authorised international military intervention in September 1999 and placed the territory under its administration. Timor Leste finally secured its independence on 20 May 2002.

International intervention brought peace and the beginnings of real development to Timor Leste. Nonetheless the nation remains one of the poorest in the world, ranking 140 on the United Nations Development Program's Human Development Index, the lowest for any State in the Asia Pacific region apart from Yemen.² In 2003 it received over USD 150 million in official development assistance, the sixth highest per capita ODA in the world, constituting over 44% of its gross domestic product, the fourth highest proportion.³

Timor Leste was born with almost no infrastructure, almost no formal economy, little framework of law and even less tradition of independent

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- 1 "Final Report of the Commission for Reception, Truth and Reconciliation in East Timor 2006 Part 6", The profile of human rights violations, para 8
 - 2 World Development Report, UNDP, 2005, table 1 at pg 221, accessible on-line at www.undp.org/reports/global/2005 (last last accessed: 19 April 2006)
 - 3 table 19 at pg 282, *ibid*

law enforcement, little and poor quality public administration and a shattered, dispersed people. Much has been accomplished in the short time since, a mere six years, but the challenges facing Timor Leste are enormous and the wellbeing of its children at risk.

1.2 The Children of Timor Leste

Timor Leste has one of the youngest populations in the world: half is under the age of 18 years. The sheer numbers of children make them, actually or potentially, important participants in their nation. The society of Timor Leste is a traditional one, reflecting its overwhelmingly rural nature, the response of the local people to the foreign occupation and the strength of the Catholic Church and its conservative understanding of families. Children and young people have tended to respect and obey their elders and have rarely sought an independent political or social role for themselves. There are pressures for change, however, evident in an increasingly active urban student population and in the strength of the national commitment to children's rights, including their right to participation.

The children of Timor Leste share the experiences of their families. They shared the experience of military occupation until 1999 and then the hope for the new independent State. Many children are themselves direct victims of the military occupation, having been tortured or injured or deprived of a parent. All are indirect victims in that they suffer the consequences of the scorched earth policy that saw much of Timor Leste destroyed. Today children share the general experience of poverty. In these circumstances it is not surprising that East Timorese children fall well short of the full enjoyment of the rights to which they are entitled under the Convention on the Rights of the Child.

1.3 Facts at a Glance⁴

- In a population of 887,000, 160,000 (18%) are under the age of 5 years and 442,000 (50%) are under the age of 18 years.
- Only 8% of the population lives in cities; 92% of the population is rural.

4 There is a scarcity of reliable statistics in relation to Timor Leste and almost none that permit comparisons or examination of trends over time. The statistics in this profile are drawn from UNICEF *State of the World's Children 2006*, United Nations Development Program *Human Development Report 2005*, UNICEF *Multiple Indicator Cluster Survey: Timor Leste 2002 2003*, Ministries of Health and of Planning and Finance *Demographic and Health Survey: Timor Leste 2003* and the Ministry of Education, Culture, Youth and Sport of Timor Leste.

- Timor Leste is very poor: per capita gross national income is USD 550. There are no statistics on the proportion of the population living on less than one US dollar a day but 32% of households live on less than 55 US cents a day.
- Child mortality rates are high: 64 per 1000 die before the age of 1 year, 80 per 1000 die before the age of 5; each year 4000 children under the age of 5, 3200 of them infants, die.
- 15% of children under 5 are severely underweight; 46% of children under 5 are moderately or severely underweight.
- The maternal mortality rate is very high at 660 per 100,000 births.
- Life expectancy at birth is 56 years.
- The primary school net enrolment rate is 76%; girls make up 49% of primary students.
- The lower secondary school net enrolment rate is 28%, of which 52% are girls. The upper secondary rate is 18%.

The Democratic Republic of Timor Leste is a constitutional republic under the 2002 Constitution. It has a directly elected, largely ceremonial President, currently the independence hero Xanana Gusmao. It has a system of parliamentary government chosen by and from the National Assembly. The governing party, Fretilin, led the independence struggle against the Indonesian occupation. Although there is a large number of political parties represented in the Parliament, Fretilin is the largest by far and holds an absolute majority of seats.

The Constitution provides extensive recognition of human rights.⁵ It incorporates the Convention on the Rights of the Child into East Timorese law, providing that “[c]hildren shall enjoy all rights that are universally recognised, as well as all those that are enshrined in international conventions commonly ratified or approved by the State”.⁶ It also specifically recognises children’s right “to special protection by the family, the community and the State, particularly against all forms of abandonment, discrimination, violence, oppression, sexual abuse and exploitation”.⁷ The Constitution also incorporates into internal law Timor Leste’s obligations under international treaties and invalidates local laws that are inconsistent with them.⁸

5 Constitution Part II “Fundamental Rights, Duties, Liberties and Guarantees”

6 Constitution Section 18.2

7 Constitution Section 18.1

8 Constitution Section 9

The law of Timor Leste remains a mix of Indonesian law as at September 1999, amendments and additions to that law effected during the United Nations Transitional Administration in East Timor between October 1999 and May 2002 and laws enacted by the Democratic Republic of Timor Leste since May 2002. Provisions affecting children are scattered through laws derived from all these sources. The Government is developing a Children's Code that will deal comprehensively with children's rights and needs.

The Government has proposed to establish a National Commission for the Rights of the Child to coordinate children's policies and programs and oversee reporting obligations under the Convention on the Rights of the Child.⁹ Members are yet to be appointed to the body. Timor Leste also has an Ombudsman for Human Rights and Justice, known as the *Provedor*, whose generalist responsibilities for human rights include children's rights.¹⁰

9 "Prime Minister's Order to Create a National Commission for the Rights of the Child", 24 February 2005

10 Established under Law 7/2004, the Statute of the Office of the Ombudsman for Human Rights and Justice.

2.0 International Conventions and Treaties

Date of admission to UN: 27 September 2002

Treaty	Status	Accession date	Reporting record
Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment	Accession	16.04.2003	No report lodged
Optional Protocol to the Convention Against Torture and Cruel Inhuman or Degrading Treatment or Punishment	No action		
International Covenant on Civil and Political Rights	Accession	18.09.2003	No report lodged
Optional Protocol to the International Covenant on Civil and Political Rights	No action		
Second Optional Protocol to the International Covenant on Civil and Political Rights	Accession	16.04.2003	
Convention on the Elimination of All Forms of Discrimination against Women	Accession	16.04.2003	No report lodged
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women	Accession	16.04.2003	No report lodged
International Convention on the Elimination of All Forms of Racial Discrimination	Accession	16.04.2003	No report lodged
International Covenant on Economic, Social and Cultural Rights	Accession	30.01.2004	No report lodged
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	Accession	16.04.2003	No report lodged
Convention on the Rights of the Child	Accession	16.04.2003	No report lodged
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	Accession	02.08.2004	No report lodged
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	Accession	16.04.2003	No report lodged
Final Protocol to the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others	No action		
Convention on Consent to Marriage, Minimum Age of Marriage and Registration of Marriages	No action		
ILO 138 (minimum age for employment)	No action		
ILO 182 (worst forms of child labour)	No action		

There are no reservations to Timor Leste's ratification of any of these treaties.

3.0 Children's Rights Review

3.1 General Overview

Timor Leste acceded to the Convention on the Rights of the Child on 16 April 2003. It acceded to the Optional Protocol on the sale of children, child prostitution and child pornography the same day and to the Optional Protocol on children in armed conflict on 2 August 2004. Its initial report under the Convention was due late in 2005 but has not yet been presented. Timor Leste has not yet reported under any of the human rights treaties. It is undertaking a pilot project with the assistance of the Office of the UN High Commissioner for Human Rights to prepare a consolidated initial report for all the treaty monitoring bodies under the revised guidelines for a common core document. UNICEF has assisted in the preparation of a draft report under the Convention on the Rights of the Child to cover matters that are specific to that treaty. The anticipated completion and lodgement dates for these reports are unknown. This profile, therefore, cannot draw from any State report or Committee Concluding Observations. It has had to be based on other reports and data collections.

3.2 Application of the CRC's Non-Discrimination Principles

In addition to general provisions incorporating international treaties into domestic law, the Constitution provides specifically for equality and non-discrimination.¹¹ It prohibits discrimination on grounds of colour, race, marital status, gender, ethnic origin, language, social or economic status, political or ideological convictions, religion, education and physical or mental condition.¹² There is specific recognition of the equality of men and women.¹³ These general provisions apply to children equally with other groups. Further, the Constitution guarantees the equality of all children whether born "inside or outside wedlock".¹⁴

As in most societies girls experience more difficulty than boys in receiving opportunities for advancement. This is especially so in traditional societies like Timor Leste. Nonetheless their mortality rates, though still high, are less than those of boys: under 1 year mortality, 75 and 90 respectively per 1000 births; under 5 years mortality, 102 and 113 respectively. And their lower secondary school enrolment rate is higher than that of boys: 52% of students are girls. The 2004 National Plan of Action on Women gives priority to girls' education.¹⁵

11 Constitution Section 16

12 Constitution Section 16.2

13 Constitution Section 17

14 Constitution Section 18.3

15 "Annual Report 2004", UNICEF East Timor, 2004

One issue affecting girls is the practice of early marriage. The minimum ages for marriage are 15 years for girls and 18 years for boys, under an Indonesian law that continues in Timor Leste.¹⁶ Early marriage of girls is widely practised, especially in rural areas. Most marriages are arranged. Custom continues to require the payment of a bride-price (*barlake*) and it is said that the cost is increasing substantially. This not only introduces a commercial dimension to the marriage arrangement but places pressure on poor families to arrange early marriages for their daughters. It also adds to the impoverishment of families with boys. The discriminatory marriage age is not being reviewed in the context of the new Children's Code. It may be invalid under the Constitution that prohibits discrimination on the ground of gender.

There is little evidence that children experience discrimination on the basis of ethnicity. Ethnic minorities in Timor Leste are small and tend to be more economically secure than the majority East Timorese. So they neither challenge the majority numerically nor suffer more extreme poverty because of discrimination.

The most significant minority is constituted by Indonesians who chose to remain after the end of the military occupation in September 1999. Most Indonesians fled at that time, fearing the consequences they might face from the East Timorese after the long occupation and particularly after the rampage of the militias at its end. But some remained because of individual family or other connections with the local society. Certainly they faced considerable popular resentment and even hostility during late 1999 and early 2000. More than 200 sought refuge in the Dili mosque and a large number remained there in 2005. But on the whole the Indonesian minority has been accepted into the new State and does not seem to encounter significant discrimination. Children from this community do not face formal discrimination but can encounter bullying and other forms of exclusion.

The most significant issue of ethnicity concerns the maintenance of the majority culture in the wake of the long Portuguese and Indonesian domination and the influx of foreigners during the international intervention. On independence Portuguese and Tetum were adopted as the official languages but Portuguese predominates in public and official life, including Government and law, thereby excluding most East Timorese.

16 Indonesian Civil Code Article 29; This provision was amended after 1999 to increase the minimum marriage age for girls to 16 years but this amendment did not extend to East Timor which by then was no longer under Indonesian administration.

The end of the Indonesian occupation was accompanied by an understandable repudiation of *Bahasa Indonesia* as an official language but it is spoken far more widely than Portuguese. With the dual pressures of Portuguese and Indonesian and the additional pressures as a result of the international intervention, indigenous East Timorese people fear for the future of their traditions and culture and consider that special measures are required to safeguard their heritage. Children often become the focus of these concerns because they are seen as the carriers of traditions and culture into the future. They are also the ones most torn between the world of their communities and the world outside.

The Constitution recognises the equality of people with disabilities and their entitlement to protection.¹⁷ There are few reliable statistics about the extent of disabilities in Timor Leste but estimates put the number of children with disabilities at about 50,000 to 60,000.¹⁸ There are few services that cater to these children. Some non-government organisations have specific programs principally for children with physical disabilities but they work almost exclusively in and around Dili. There is only one specialist primary school and it too is in Dili.¹⁹ Evidence suggests that children with disabilities have higher than average infant and under-five mortality rates, that they have lower than average school enrolment and attendance rates and tend to be isolated from the broader community. There are no data either to substantiate or to challenge these conclusions. A national policy on people with disabilities is being developed. It is a generalist policy, not child specific, but it will have implications for policy and programs relating to children.

The greatest differences between groups in Timor Leste probably arise not from any of the grounds on which discrimination is prohibited but on the basis of isolation. Timor Leste is mountainous and its people are widely dispersed. Transport and communications are difficult and as a result it is difficult to provide health, education and other services to more rural and remote communities. Statistics disaggregating basic social indicators for children in urban, rural and remote areas are not available and so it is not possible to determine the extent of disparities. However, on the basis of what is known about Timor Leste and of the experience in States with comparable geographic and demographic profiles, it is reasonable to expect the disparities to be great.

17 Constitution Section 21

18 Provisional data from the 2004 Census

19 "Country Paper on the Situation of the Rights of Persons of Disabilities", Secretary of State for Labour and Solidarity, ESCAP Expert Meeting and Seminar, Bangkok, 2-4 June 2003.

3.3 Application of the CRC's Best Interests of the Child Principles

The best interests principle is incorporated into domestic law by implication as part of the incorporation of international law. However the specific recognition of the principle in the law of Timor Leste is weak. In this area Indonesian law remains operative but the proposed Children's Code will replace it with a comprehensive law including strong endorsement of the best interests principle. At present there is little judicial understanding of the principle and little application of it as a determining factor in cases affecting children.

The application of the best interests principle is especially problematic in relation to the separation of children from their families, as discussed below. The traumatic history of East Timor has made family separation common-place and may have induced an acceptance of outside intervention in families where there is no good reason for intervention. Separations were effected without legal sanction or judicial determination and the absence of law today still makes that the norm rather than the exception in cases of separation. The process of assessing the child's best interests and then making a decision on that basis remains largely unknown. The introduction of the new Code will need to be accompanied by a comprehensive training program for judges, lawyers and civil servants on the meaning and application of the best interests principle.

3.4 Application of the CRC's Child Development Principles

Survival is the immediate challenge for the children of Timor Leste. The infant and child mortality rates are high. One child in 12 dies before the age of 5.²⁰ Children who survive are often underweight to a moderate or severe degree – almost half the children under 5.²¹ There are indications that the under-five mortality rate has been cut by more than 50% since 1990. That should be the case since in 1990 the country was under military occupation and a state of war and experiencing severe famine as a result of both. However, a general lack of longitudinal data makes it impossible to know definitely whether the underlying situation is improving or deteriorating. It is clear, nonetheless, that the majority of infant and child deaths are preventable.

Certainly the post independence Government has allocated high priority to improving health services, including antenatal and postnatal care and nutrition and immunisation programs. It has identified the main factors in

20 "State of the World's Children 2006", UNICEF, 2006, table 1

21 table 2, *ibid*

the high mortality rates as preventable infectious diseases, low use of skilled antenatal care, poor reproductive health and lack of knowledge of birth spacing and birth limiting. It has also focused on poor malnutrition and iodine and vitamin A deficiencies.²² Use of health care facilities remains low, however, due to costs, distance, staff shortages and the persistence of traditional suspicions of doctors and other health professionals.

Until 1999 the East Timorese were covered by the Indonesian child immunisation program. Nonetheless rates were low. In 1997 only 56% of one year old children were fully immunised.²³ Immediately after 1999 there was a large fall in rates: an estimate in 2002 was that only 5% of one year old children were fully immunised.²⁴ The decline seems to have been halted at that point and immunisation rates have been increasing steadily since then. In 2003 the proportion of one year old children fully immunised had risen to 18% and in 2004 to 48%.²⁵ Mass campaigns achieved 97% immunisation against polio for under 5 year olds in 2002 and 99% immunisation against measles in 2003. Polio has been eliminated but mass immunisation is continuing to prevent any possibility of its recurrence.

There is a high level of malnutrition across the country and in all groups, with 77% of under 5 year olds being moderately or severely stunted (height for age), 15% moderately or severely wasted (weight for height) and 61% moderately or severely underweight (weight for age).²⁶ These figures reflect poor maternal nutritional status and links between poor health and poverty. They also reflect simple lack of food: household food shortages are reported for 36% of children aged 6 years and over and 7% for children under 6 years.

The health problem is compounded by Timor Leste's high birth rates: 7.8 children per woman in 2002-2003, one of the highest in the world, the product of high fertility rates, low levels of contraception usage and poor birth spacing. The first child is born soon after marriage and then a child

22 "Health Care: Priorities and proposed sector investment program", Ministry of Health, April 2005, pg 1

23 "Demographic and Health Survey: Timor Leste", Ministries of Health and of Planning and Finance, 2003

24 "Multiple Indicator Cluster Survey: Timor Leste 2002", UNICEF, 2003

25 Statistics for 2003 from the Ministries of Health and of Planning and Finance *Demographic and Health Survey: Timor Leste 2003* and for 2004 from the World Health Organisation, UNICEF and the Ministry of Health *Immunisation coverage among women and children 12-23 months in the Democratic Republic of Timor Leste using the EPI cluster methodology* December 2004, Final Report.

26 "Demographic and Health Survey: Timor Leste", Ministries of Health and of Planning and Finance, 2003.

might be born each year for 10 to 15 years. There is little adolescent education on either family planning or on reproductive health more generally.²⁷

The health problem is also a result of poor housing conditions: 71% of households have no water, 74% no electricity, 70% no proper toilet and 70% only earthen floors.²⁸

More positively there is a low incidence of HIV/AIDS. The first case of HIV was diagnosed only in 2001 and it was found in the early years principally among foreign workers. The foreign intervention may have been responsible for bringing the virus to Timor Leste. Poor awareness of the disease creates a risk of an outbreak. In 2001 only 16% of women of child bearing age had heard of the virus, only 7% knew of the principal preventive strategies and only 0.1% had adequate knowledge to deal with the risk of the virus.²⁹ The Government adopted a national AIDS strategy in 2002 and updated it in 2003. It is also implementing a life skills education project targeted at young people over 14 years to reduce vulnerability to HIV infection.³⁰ It may still be possible to prevent the wider spread of the virus by effective early interventions through education and awareness-raising.

The Portuguese colonialists left East Timor with very little by way of **schools** and other educational facilities. What Indonesia had provided during its occupation was almost entirely destroyed through the scorched earth policy in September 1999: 90% of schools were ransacked and most burned down, and many teachers and education administrators, being Indonesians, fled the country. Timor Leste began its post colonial life in 1999 with almost nothing. The construction of a proper education system was one of the highest priorities of the UN administration and from 2002 the Government of the independent State. The National Development Plan gives high priority to education as central to poverty reduction.³¹

The Constitution recognises and guarantees the right to education but provides very little content to the right. The State is required "to promote the establishment of a public system of universal and compulsory basic education that is free of charge in accordance with its ability and in conformity with the law".³² The Government defines "basic education" as

27 *ibid*

28 *ibid*

29 "Multiple Indicator Cluster Survey: Timor Leste 2002", UNICEF, 2003

30 "Annual Report 2004", UNICEF East Timor, 2004

31 *ibid*

32 Constitution section 59.1

nine years of schooling, comprising primary and lower secondary schooling.³³ The Constitutional guarantee is less than Timor Leste's obligation under the Convention on the Rights of the Child to provide free compulsory universal primary education "to the maximum extent of [its] available resources".³⁴ There have been reports that some government primary schools charge fees that are well beyond the capacity of local families to pay. A Basic Education Law and an Organic Law of the Ministry of Education have been drafted but not yet enacted.

Both the Government and the Catholic Church provide schools, 83% of students attending the former and 17% the latter. The Government conducts 86% of primary schools and 72% of lower secondary schools but only 55% of upper secondary schools, reflecting its priority for basic education.

The primary school net enrolment rate was 76% in 2003, an increase from 51% in the last year of the Indonesian occupation.³⁵ There was a large number of over-aged primary students, due to the return to primary schooling of children whose education had been interrupted by the upheaval of 1999 and its aftermath. Of the 185,000 primary students, 40% were considered to be over the standard enrolment age for their grade.³⁶ Only 36% of children complete Grade 6. Achieving universal free primary education continues to pose challenges for Timor Leste. It requires the elimination of costs associated with primary schooling, more and better educational facilities and resources, schools that are more accessible to children in rural and remote areas, curriculum reform, more and better trained teachers and improved teaching. To address these challenges UNICEF has introduced its Friendly Schools program in Timor Leste to model best practice. It plans to work through 100 clusters of schools, involving all primary schools. Language presents particular difficulties with 16 languages having significant numbers of speakers. Portuguese and Tetum are the languages of instruction but both children and teachers struggle with Portuguese, there are few educational resources available in Tetum and many students speak neither language adequately.

33 "Education and training: priorities and proposed sector investment program", Ministry of Education, Culture, Youth and Sport, April 2005

34 Convention on the Rights of the Child Articles 28 and 4

35 "Education and training: priorities and proposed sector investment program", Ministry of Education, Culture, Youth and Sport, April 2005

36 *ibid*

Lower secondary education is considered part of the “basic education” guaranteed by the Constitution. Net lower secondary enrolment is 27.5%, up from 19.2% in 2000.³⁷ Lower secondary schooling is especially difficult for rural and remote children, with two thirds of the schools located in the two principal towns, Dili and Baucau. As a result some districts experienced a decline in enrolment rates between 2000 and 2003. Efforts to increase primary school completion should flow on to an increase in lower secondary school enrolment but costs and access will continue to be major deterrents.

Providing access to upper secondary school education is more difficult. The net enrolment rate in 2003 was 18%, an increase of only 2% from the 2000 rate. There are only 55 upper secondary schools, half of them in Dili.³⁸ The generally poor educational standards in the community make the recruitment of properly qualified senior secondary teachers difficult. The adult literacy rate in Timor Leste is only 58.6%.³⁹ Where educational attainment and literacy have historically been so low, it is difficult to foster broad public understanding that proper schooling is essential for children.

The Constitution provides, “The State shall protect the family as the society’s basic unit and a condition for the harmonious development of the individual”.⁴⁰ Children have the right to live in a **family**.⁴¹ They are also entitled to “special protection by the family, the community and the State, particularly against all forms of abandonment, discrimination, violence, oppression, sexual abuse and exploitation”.⁴² In this the family has the primary responsibility but the State has the ultimate obligation for the wellbeing of children, including the obligation to support families to enable them to fulfil their responsibilities.

The people of Timor Leste have long accepted **alternative care** arrangements for children either through traditions of extended family arrangements or through necessity as a result of famine, war and social upheaval. Generally alternative care is provided by members of the extended family or neighbours. These informal arrangements are based on traditional social relationships and obligations.

37 *ibid*

38 *ibid*

39 “World Development Report 2005”, United Nations Development Program, 2005, table 1 pg 221

40 Constitution Section 39.1

41 Constitution Section 39.2

42 Constitution Section 18.1

Children suffered along with the rest of the population during the Indonesian occupation but they also suffered abuses that were specific to them.⁴³ Children were transferred in their thousands to Indonesia without proper justification and placed either in institutions or with other families. During the period of the occupation between 2400 and 3500 children were removed from their families in this way.⁴⁴ Thousands of children were dislocated during the upheaval of September 1999, among the 250,000 people, a third of the population, who were subjected to the Indonesian military's mass evacuation program.⁴⁵ "Many children were separated from their families, with their parents going into hiding or losing them in the chaos. Many were taken under the wing of self-appointed guardians. Parents and guardians living in conditions of deprivation and military and militia intimidation in camps in West Timor found offers to care for and educate their children outside the camps attractive, and might sign in haste an agreement with institutions offering safety and sustenance to their children. In such conditions, it could not be said that parents always gave their consent freely or fully understood the consequences of their decisions."⁴⁶ Almost all separated children have been re-united with their families, some after some years of separation, but it is thought that others, perhaps numbering in the hundreds, have not been found. At the end of 2004 the United Nations High Commissioner for Refugees had 107 outstanding cases of East Timorese children still unaccounted for in Indonesia but the actual number of children still missing is "certainly much higher".⁴⁷

In post independent Timor Leste separation of children from their families remains a concern in the absence of proper law and proper legal process, as described above. It is estimated that 17,000 children, 2000 of them aged under 5, are not living with their birth families.⁴⁸ Around 2700 of these children are in institutional care. There is evidence that assumptions are often made that children will be better in institutions than with their families and that they are removed from their families without legal sanction. There are 51 residential institutions for children, all managed by religious organisations. Conditions are usually of a very low standard, giving rise to concerns in relation to education, health and nutrition. There

43 "Final Report of the Commission for Reception, Truth and Reconciliation in East Timor 2006 Part 7", Violations of Human Rights, Chapter 7.8 Violations of the Rights of the Child, para 11

44 para 355, *ibid*

45 para 655, *ibid*

46 para 397, *ibid*

47 para 357, *ibid*

48 "Multiple Indicator Cluster Survey: Timor Leste 2002", UNICEF, 2003

are no arrangements for governmental oversight and review of placements or of institutions but the Government has agreed to adopt procedures for determining the need for alternative care, minimum standards for institutions and a requirement for an individual case plan for each child.

Informal placements with other family members or neighbours are still far more common than institutional care, catering to more than 80% of children separated from their families. Sometimes these arrangements amount to informal adoptions according to customary practice. The children will usually be accepted into their new families as full family members but there are also situations where the children are exploited or subjected to abuse or neglect. Formal legal adoption is currently regulated under Indonesian law that continues from the pre-independence period but it is rare. The Government proposes to legislate for both formal and informal arrangements, requiring a judicial order, made on the basis of the child's best interests, for a child's adoption, guardianship or long term alternative care. There is no provision for inter-country adoption and the Government has indicated that it will not be legislating for this at this stage.

Indonesian law also continues to apply in relation to **abuse, exploitation and neglect** of children. Many children experience violence and exploitation, perhaps unsurprisingly in the context of East Timor's long history of militarisation and occupation. There is wide acceptance, even among children themselves, of violence against children in the name of discipline or correction. Few cases of violence against children go to court and even fewer cases of sexual abuse. The law places primary responsibility on parents to initiate cases of sexual abuse for a girl under 15 years, except where the alleged offender is the parent. This leaves the child trapped where the abuse occurs within the family and the parents refuse to act. There is need for concerted, coordinated action on a number of fronts simultaneously, including law reform, judicial and police training and awareness raising, community education, especially directed towards parents, and education for children about their rights. The Government set up Child Protection Networks in the three largest towns in 2003 to raise awareness of child protection issues and promote responses across sectors.

Sexual exploitation of women in Timor Leste has a history founded in the centuries of foreign occupation. Sexual exploitation and sexual violence were common during the Indonesian occupation.⁴⁹ The large

49 "Final Report of the Commission for Reception, Truth and Reconciliation in East Timor 2006 Part 7", Violations of Human Rights, Chapter 7.7 Sexual violence and Chapter 7.8 Violations of the Rights of the Child.

international intervention, both military and civilian, in and from 1999, was accompanied by a demand for prostitutes. A study in 2004 reported on 100 female Timorese sex workers in Dili of whom six started sex work at age 14, five of them after having been raped. Of the 150 non-Timorese sex workers, none was a minor. Of the estimated 110 male sex workers in Dili, 75% were estimated to be minors, with an average age of 14.5 years when entering sex work.⁵⁰

Apart from the experiences of forced removal of children during the Indonesian occupation, there have been only a few cases of trafficking officially reported. For example, only three cases of trafficking of young women into Timor Leste came to police attention during 2003. The most comprehensive study of trafficking found that Timor Leste was not a country of origin or transit for trafficking but was a country of destination for a relatively small number of persons for sexual exploitation. It estimated that a majority of the female non-Timorese sex workers in Dili could be considered victims of trafficking.⁵¹

There are an estimated 200 to 250 **street children** in Dili. Most of these children are not homeless or family-less but work in the informal economy as street vendors. Many come from poor rural areas and live with extended family members in the city while trying to make money, for themselves or their families in the countryside. They are not in school and so they do not enjoy their right to education and their futures are at risk but they are not in immediate danger as street children often are in other societies. In 2005 the Government introduced a care management approach to the children to monitor their welfare and respond to their individual needs.

The situation of street children is a part of a wider **child labour** issue in Timor Leste. Child labour is common in support of family income. Few children are in formal labour, only 0.5% of 5 to 14 year olds in paid labour and 3.7% in unpaid labour, according to a national survey in 2002.⁵² Most often children work on family farming plots or in their local villages in the informal economy. Many would be involved in work that is dangerous or onerous.

50 "Trafficking in East Timor: a look into the newest nation's sex industry: 2004", ALOLA Foundation, 2004

51 *ibid*

52 "Multiple Indicator Cluster Survey: Timor Leste 2002", UNICEF, 2003

Timor Leste has not yet ratified the International Labour Organisation conventions on the minimum age of employment (Convention 138) and on the worst forms of child labour (Convention 182) but it is preparing to do so. The UN administration enacted a Labour Code in 2002 in preparation for that but ratification has not yet occurred. The Code focuses primarily on the formal labour market and so does not affect the most prevalent forms of child labour. The Government is now reviewing the Code.

Birth registration remains an issue of concern. In 2001 the UN administration established a central civil registry in Dili for the first time to register births and issue birth certificates. However, two surveys showed continuing low rates of registration: 22% of children under five were reported as formally registered and 53% of children had some form of registration, formal or through a hospital or village head.⁵³ Registration is now being promoted through a mobile registration service operating in a small number of districts and through a *Mother and Child Handbook*, produced by the Ministries of Justice and Health with the assistance of UNICEF, that includes a birth registration form.⁵⁴

3.5 Application of the CRC's Child Participation Principles

Timor Leste is a traditional society in which children have subordinate roles in families and society. Nonetheless, Timor Leste has given significant priority to the child's right to participate in decisions affecting him or her, promoting a voice and presence for children in local and national affairs. The Constitution's provision incorporating the Convention of the Rights of the Child brings into domestic law the child's right to participate.⁵⁵ This gives the highest endorsement to respect for this right.

Children's participation is found in a number of significant events. Some of these occur at the international and national level. Children have been included in the official delegations from Timor Leste to regional and international meetings.⁵⁶ A series of national student parliaments has been held in the National Assembly since independence.⁵⁷ Their recommendations were reported to the National Assembly. On International Children's Day in November 2003 the Prime Minister met with a national gathering

53 "Multiple Indicator Cluster Survey: Timor Leste 2002", UNICEF, 2003; "Demographic and Health Survey: Timor Leste", Ministries of Health and of Planning and Finance, 2003.

54 "Annual Report 2004", UNICEF East Timor, 2004

55 Constitution Section 18.2

56 Including the UN General Assembly Special Session on Children May 2002, the Seventh East Asia and the Pacific Ministerial Consultation on Children March 2005 and the Regional Conference on Violence against Children June 2005.

57 May 2002, December 2002, November 2003

of children and discussed their concerns with them. District consultations with children and young people occur regularly on major issues of concern to them. There are also focused discussions on the development of reports, programs and policies affecting children, including Timor Leste's initial report under the Convention on the Rights of the Child. Many of these consultations include information and training programs for children about their rights under the Convention.

Children's participation is also supported by the Constitutional guarantee of freedom of expression.⁵⁸ Children have many opportunities to express their views in the media and to exchange information with each other. Children's materials are regularly in the press and electronic media and children are able to contribute and participate directly. Their views can be presented and heard.

Implementing the right to participate in institutions remains difficult. Courts are not used to seeing children's views on matters that affect them. Traditional village and family structures are hierarchical and patriarchal and children struggle to be heard in these forums.

3.6 Application of Other Principles Worthy of Note

Indonesian law set the age of criminal responsibility at 8 years. During the UN administration, a regulation raised it to 12 years.⁵⁹ This is still well below what the Committee on the Rights of the Child considers an appropriate minimum age of criminal responsibility, 14 years. The UN regulation also provides that 17 year old children be treated as adults in the criminal justice system, contrary to the Convention on the Rights of the Child. There are procedural safeguards for children relating, for example, to police interrogation and imprisonment. They are to be separated from adults in prison but only "if possible". Imprisonment of children during the Indonesian period was rare but there was no juvenile prison in East Timor and so children sentenced to imprisonment were transferred to other provinces.

There are few criminal prosecutions of children in Timor Leste. In the year from July 2004 to June 2005, there were only 22 prosecutions, 17 for serious crimes and 5 for minor crimes. Most minor offences are handled informally by the police with family and community leaders. Those who go to court, however, encounter procedural irregularities and have

58 Constitution Section 40

59 UNTAET Regulation No. 2000/30 on the Transitional Rules of Criminal Procedure

inadequate legal representation. The Ministry of Justice has undertaken capacity building programs for the judiciary and developed a manual on children's rights in relation to juvenile justice and child abuse.⁶⁰ There is still no juvenile prison and none is proposed, on the very reasonable basis that establishing a specialist facility will encourage courts to sentence children to imprisonment in it. There is a separate children's block in the prison in Dili and all children serve their sentence there. The block is isolated at night but not during the day to enable the children to participate in prison activities. A separate, specialist facility for up to 24 children is being constructed at the Dili prison. In mid 2005 10 children were in prison, six of them on remand.

4.0 Overall Assessment

Timor Leste began with almost nothing. Its children had experienced the trauma of war and famine. Many were physically or emotionally injured as a result. Many had lost parents or other close family members. They had experienced severe dislocation, many of them having been removed from East Timor in panic in September 2002, remaining away for months or even years. They were deprived of schools, health facilities and other services. Some had been child soldiers, conscripted or volunteering as members of militias or resistance groups. They lost years of their childhood. Children born after 1999 were spared the suffering of the military occupation itself but still shared its legacy. This context must be incorporated into any assessment of Timor Leste's implementation of its obligations under the Convention on the Rights of the Child.

The children of Timor Leste score poorly on many of the most important indicators. They continue to experience high rates of infant and child mortality, high rates of childhood disease, and low rates of educational attainment. It appears that disability rates are high. Children in rural and remote areas are especially disadvantaged. The most significant development, however, is peace. The children of East Timor are enjoying peace for the first time. And the freedom that comes with independence and self-determination. The future of Timor Leste is in its own hands and, most of all, in the hands of its children.

60 "Annual Report 2004", UNICEF East Timor, 2004

That realisation is apparent in the approach the Government of Timor Leste takes towards children and their rights. The program of information, awareness raising and children's engagement with their rights has been one of the most extensive anywhere. There has been a genuine effort to involve children and equip them to exercise their rights. The obligation to promote the Convention is taken seriously. Nonetheless, the framework of law and institutions to protect and promote rights remains undeveloped. The extensive guarantees contained in the Constitution are largely not reflected in the mix of laws that govern Timor Leste. There is urgent need for a comprehensive new law on children that implements the Convention and the Constitutional provisions. There is need for a new law on juvenile justice. There is a need for training of judges, lawyers, police and other civil servants in the application of the Convention, the Constitution and the new laws.

These steps are the easier ones to take: information, training, opportunities for participation, a better legal framework and better legal institutions. The far more difficult tasks are those associated with ensuring that the children of Timor Leste enjoy their economic, social and cultural rights, especially the highest attainable standard of health and universal basic education. These need to be the priorities in development planning. There has been significant progress in the few years since the 1999 upheaval but there remains a long distance still to travel.



Children's Rights Profile on Viet Nam



1.0 Introduction

1.1 Country Overview¹

Viet Nam is located in South East Asia, occupying total land of 329,314 square kilometres and a coastal line of approximately 3,200 kilometres stretching from North to South. The average population growth rate is 1.4% per annum and in 2005 its population reached 83.2 million. The population density is 252 persons per square kilometre. The average life expectancy is 71.3 years, the urban population accounts for about 27.2% of the total, and 31.1% of the total population is under age 15. Viet Nam has 54 different ethnic groups, and 64 cities and provinces. Hanoi is the capital city with a population of 3.1 million people.

After reunification in 1975, Viet Nam turned its attention to reconstruction and development in order to provide its citizens with greater independence and freedom, while realizing their rights as articulated in the Independence Declaration that gave birth to the Democratic Republic of Viet Nam in 1945.

Due to severe damage caused by many years of war and related catastrophes, Viet Nam's economy experienced a long lasting crisis during the 1970's and 1980's. According to the Government, a formal process of reform (termed *Doi Moi*) began in 1986 and was based on a market economy, democracy and the rule of law, and external cooperation.² Following upon a strategy of socio-economic stabilization and development for the period of 1991-2000, Viet Nam has now entered a new phase of development, seeking to accelerate the progress of national industrialization and modernization. At present Viet Nam is implementing *The Socio-economic Development 2001-2010 Strategy*, with the following objectives: Lift the country from its under-development status; greatly improve people's physical, social and cultural living conditions; develop a socialist-oriented market economy; and establish the foundation for Viet Nam to become a modern industrialized country by 2020.³

1 The data provided in this section is the most current available. It is quoted from "Viet Nam Achieving the Millennium Development Goals" (*infra* note 2) coupled with statistics collected from the United Nations Development Programme.

2 "Viet Nam Achieving the Millennium Development Goals", Socialist Republic of Viet Nam, August 2005; Although the government asserts that it is now operating under the Rule of Law, some non-government and inter-government organizations - the UNICEF country office in Hanoi among them - have suggested the country has yet to embrace the concept in reality.

3 "Viet Nam Achieving the Millennium Development Goals", Socialist Republic of Viet Nam, August 2005

1.2 The Children of Viet Nam

In Viet Nam the family is traditionally viewed as the foundation of society, parents and grandparents alike providing children with direct care. Two Vietnamese sayings explain their tradition well, "A family where the son will be superior to his father is a family blessed with happiness," and "When young, one relies on one's parents; when old, on one's children." As part of this tradition, children are educated "to shed glory on the race". Much of Vietnamese history bears this out.

In Viet Nam, three generations usually live under the same roof: parents, their children, and the grandparents (the latter normally living with their eldest son). Children are often cared for by their grandparents and their uncles and aunts; and when old and weak, grandparents are looked after by their grandchildren. Mention should also be made of the importance attached in Viet Nam to strong, close relations between households in the same village. Such relationships are of great significance, especially where the care and protection of orphans is concerned.

The first organization for children in Viet Nam was opened in May 1941, when the Youth Union for National Salvation was established. After the 1945 revolution, this organization was renamed the Pioneers. In May 1961, a Committee for Children and Teenagers was established, and in September 1972, the Standing Committee of the National Assembly launched a campaign to protect, care for and educate children, using the slogan, "All for the future of our sons and daughters". Today the Government encourages families to have no more than two children in order to receive a wage increase and other similar benefits. This policy aims to favour the socio-economic development of the country, while encouraging families to use contraceptive methods.⁴

In 1979, to coincide with the United Nations International Year of the Child, the Vietnamese Committee of the International Year of the Child was set up, and the Standing Committee of the National Assembly approved the Ordinance on the Protection, Care and Education of Children⁵, which states that care for the child is the responsibility not only of the family but of the State and society too. The ordinance identifies six basic rights and three basic obligations of children.

4 "Country Profile of Viet Nam", International Planned Parenthood Federation, June, 1999; The information concerning the government's policy with respect to the number of children permitted in each family was further confirmed with the UNICEF country office in Hanoi: Communication between Vu Tuan Minh, Project Officer, UNICEF Viet Nam and Vrej Atabekian, Project Manager, the International Bureau for Children's Rights, 9 March 2006

5 In Viet Nam an Ordinance is similar to a Bill in common law.

On 26 January 1990 Viet Nam signed the Convention on the Rights of the Child, and on 20 February 1990 ratified it without reservation. Viet Nam was the first Asian country to do this, and the second in the world. In September 1990, Viet Nam took part in the World Summit for Children and in March 1991 signed the World Declaration on the Survival, Protection and Development of Children.

Although much appears to have been accomplished at the governmental level, but old cultural attitudes towards children may take longer to change. The result is that various forms of discrimination against women and girls and of authoritarian attitudes towards children still persist in various aspects of life in Viet Nam.⁶ Education is valued and most people are deeply concerned about their children's future. Providing for one offspring is at the centre of most people's preoccupations. Low standards of living affect both ways of life and attitudes, and much of the attention of the average family is devoted to earning a living and increasing income.

1.3 Facts at a Glance (2003-2006)

- Population in 2005 was 83.2 million, of which women accounted for 51.2%, the urban population accounted for 27.2%, and the under age 15 population accounted for 31.1% of the total.⁷
- Average GDP per capita in 2004 was approximately 560 USD.⁸ GDP growth has averaged 7% per annum and was 7.7% in 2004.⁹
- The poverty ratio has been declining by 2% annually and the national poverty ratio in 2004 was 8.3%.¹⁰
- Viet Nam's national budget allocation slated for social development in 2005 was 25% of the national budget. The allocation for health-care, education and training and the protection of children in 2005 was approximately 18% of the national budget.¹¹

6 "Initial reports of States parties due in 1992: Viet Nam", UN Doc. CRC/C/3/Add.4, 22 October 1992

7 "Viet Nam Achieving the Millennium Development Goals", Socialist Republic of Viet Nam, August 2005

8 "Initial reports of States parties due in 1992: Viet Nam", UN Doc. CRC/C/3/Add.4, 22 October 1992

9 Remarks by H.E. Mrs. Le Thi Thu, Minister and Chairperson of the Committee of Population, Families and Children on Viet Nam's response to the recommendations of the Committee on the Rights of the Child, Hanoi, 6 May 2005

10 *ibid*

11 *ibid*

- The rate of malnourished children was 26.5% in 2004 and was expected to drop to 24% in 2005.¹²
- The mortality rate for children below 1 year was 21 out of 1,000 live births in 2003; for children below 5 years old it was 24 out of 1,000 live births in 2002 (the last year for which statistics were available).¹³
- The number of times that women came for pregnancy checks increased 2.2-fold in 2002 (compared to prior years) and 2.5-fold for 2003.¹⁴
- The mortality rate for mothers in labour was 90 per 100,000 births for 2003.¹⁵
- Ratio of children of appropriate age entering school was 80% for 2004.¹⁶
- Ratio of children at the age of 6 entering school was 93% for 2003 and the target was set at 97% in 2005.¹⁷
- Ratio of pupils that graduate from primary school was 99.2% and the ratio of children that graduate from secondary school was 96.1% for the school year of 2003-2004.¹⁸
- 31 of 64 metropolitan cities and provinces had established universal secondary education for the school year of 2003-2004; boarding schools operate in 100% of the districts in the ethnic minority areas.¹⁹
- According to official data, in 2005, 80% of street children in Hanoi and Ho Chi Minh City had been returned to their families, integrated themselves with the communities and resettled themselves in attending formal education and/or vocational training courses.²⁰ However, alternative reports indicate that the situation of street children, particularly in the large cities like Hanoi and HCMC which attract them from the rural areas, remains difficult. Children aged

12 *ibid*

13 *ibid*

14 *ibid*

15 *ibid*

16 *ibid*

17 *ibid*

18 *ibid*

19 *ibid*

20 *ibid*

16 and 17, in that regard, will not be treated as children and, since prostitution is defined as a crime, street children who are sexually exploited are often likely to be treated as criminals and incarcerated in special institutions (Centres 05 and 06). According to MOLISA and CPFC surveys, the number of street children has increased steadily, from 2,611 in 1993 to 10,351. MOLISA surveys shows that most street children originate from poor provinces and large, poor families, and 32% are orphans and 5% are double orphans.²¹

- Viet Nam is a socialist republic. The 1992 Constitution recognizes the Communist Party of Viet Nam as the leading force of the State and society, operating within the framework of the Constitution and the laws of the country.²²
- The 1992 Constitution embodies important changes from the former Constitutions of 1959 and 1980. The economic rights of the citizen, including the freedom to do business, the right to ownership over capital, property, housing and other means of production, as well as the right to inherit, are all stated for the first time. Apart from economic rights, the new Constitution also articulates a number of political rights either not referred to at all or stated only in general terms in previous Constitutions (i.e., no one shall be arrested without a court ruling; no one shall be considered guilty and accordingly liable to punishment unless convicted by a court of law; no one shall infringe upon the freedom of belief and religion; citizens may go to foreign countries and return from foreign countries to the homeland; citizens' rights embody human rights in the political, civil, economic, cultural and social spheres; citizens have the right to lodge protests with and make denunciations to relevant State agencies against illegal acts by State agencies, economic and social organizations, people in the armed forces or individuals.)²³
- The National Assembly is the highest representative body and the highest State body with constitutional and legislative powers and its members are elected by universal suffrage. The National Assembly elects and has the right to dismiss the President and Vice-President of State, the Chairman and Vice-Chairman of the National Assembly, the Prime Minister, the Chief Justice and the Chief Prosecutor.²⁴

21 Hai Huu, N. and Nhung, L.T., 2001, p. 7-8.

22 "Initial reports of States parties due in 1992: Viet Nam", UN Doc. CRC/C/3/Add.4, 22 October 1992.

23 *ibid*

24 *ibid*

2.0 International Conventions and Treaties

Date of admission to UN: 20 September 1977

Convention on the Rights of the Child

- Signed: 26 January 1990; ratified: 28 February 1990
- Declarations and Ratification: Articles 1-20
- Viet Nam's second periodic report was considered by the Committee at its January 2003 session; the third and fourth periodic reports are to be submitted as one document on 1 September 2007.

Optional Protocol (Sale of Children)

- Signed: 8 September 2000; ratified: 20 December 2001
- Reservations and Declarations: Article 5
- Viet Nam's initial report was submitted on 8 November 2005 but has not yet been considered by the Committee on the Rights of the Child.

Optional Protocol (Armed conflict)

- Signed: 8 September 2000; ratified: 20 December 2001
- Reservations and Declarations: Articles 1-20
- Viet Nam's initial report was submitted on 8 November 2005 but has not yet been considered by the Committee on the Rights of the Child.

International Covenant on Economic, Social and Cultural Rights

- Acceded: 24 September 1982
- Reservations and Declarations: Article 26 (1)
- Viet Nam's initial report was submitted in 1990 and considered by the Committee on Economic, Cultural and Social Rights at its May 1993 session; its second and third periodic reports were to be submitted as one document on 30 June 2000.

International Covenant on Civil and Political Rights

- Acceded: 24 September 1982
- Reservations and Declarations: Article 48 (1)
- Viet Nam's second periodic report was considered at the Human Rights Committee's March 2002 session; the third periodic report was due 1 August 2004.

Optional Protocol (International Covenant on Civil and Political Rights)

- No action to date.

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children

– A country must first ratify the UN Convention against Transnational Organized Crime before it can ratify the Protocol. The Government of Viet Nam has signed but not ratified the Convention and it has not yet signed the Protocol. It has announced its intention to ratify the Convention and protocol later this year (2006) and has undertaken some concrete steps to identify what changes will be required to its laws to bring them into compliance with the requirements of the TOC Convention and the Protocol.²⁵

Convention on the Elimination of all forms of Discrimination against Women

– Signed: 29 July 1980; ratified: 17 February 1982
 – Reservations and Declarations: Article 29
 – Viet Nam's second periodic report and fourth and fifth, which were submitted as one document, were considered at the Committee's July 2001 session; the sixth periodic report was due on 19 March 2003.

Optional Protocol on the Convention on the Elimination of all forms of Discrimination against Women

– No action to date.

International Convention on the Elimination of All Forms of Racial Discrimination

– Acceded: 9 June 1982
 – Reservations and Declarations: Articles 17, 18 and 22
 – Viet Nam's sixth through ninth periodic reports, which were submitted as one document, were considered by the Committee at its July/August 2001 session; the tenth and eleventh periodic reports were to be submitted as one document on 9 July 2003.

Convention on Consent to Marriage, Minimum Age for Marriage and Registration for Marriages

– No action to date.

25 Department of Criminal and Administrative Laws, Ministry of Justice of Viet Nam (2004). "Assessment of the Legal System in Viet Nam in Comparison with the United Nations Protocols on Trafficking in Persons and Smuggling of Migrants, supplementing the United Nations Convention against Transnational Organized Crime", Hanoi: Department of Criminal and Administrative Laws, Ministry of Justice, UNICEF, and UNODC, April 2004.

Declaration on the Elimination of Violence against Women

– No action to date.

Convention concerning the Minimum Age for Admission to Employment (ILO 138)

– Ratified: 24 June 2003

– Set minimum age at 15.

Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO 182)

– Ratified: 19 December 2000.

3.0 Children's Rights Review

3.1 General Overview

On 20 February 1990, Viet Nam ratified the Convention on the Rights of the Child without reservation. In September 1992, the Government of Viet Nam submitted its first **two year report on the implementation of the CRC** to the Committee on the Rights of the Child. This report showed that while Viet Nam faced numerous socio-economic difficulties, the Government seemed determined to carry out its commitment to the Convention through incorporating its content into Viet Nam's socio-economic strategies while harmonizing the Convention with national legislation. After reviewing Viet Nam's two-year report, the Committee on the Rights of the Child expressed its appreciation for the report's frankness and openness and for the Government's efforts to comply with the Convention. At the same time, the Committee recommended that Viet Nam should take a number of steps to strengthen its implementation of the Convention²⁶. In particular the Committee noted that while the country's current transition to a market economy can increase economic growth, it can also have a negative impact on the implementation of the economic, social and cultural rights of children, for instance by increasing the financial burden on households for health and education services.

Viet Nam's **second periodic report** was submitted to the Committee in May 2000 and considered in 2002. In reviewing the second report, the Committee regretted that some of the concerns and recommendations it

26 "Updated Report on the implementation of the Convention on the rights of the child Period 1998 -2002", UN Doc., CRC/C/65/Add.20, 5 July 2002

made upon consideration of the State party's initial report had not been sufficiently addressed, specifically those regarding mitigation of the negative impact of economic reforms on vulnerable groups, reform of the juvenile justice system and dissemination of the Convention amongst ethnic minorities.²⁷

In its **Concluding Observations**, the Committee made particular mention of the Government's efforts to support and facilitate children's participation and improve the coordination and implementation of its child rights policy. The Committee also welcomed the development of specific child rights indicators, the formulation of a second *National Programme of Action for Children for 2001-2010*, and the development of various other special programmes, such as the *National Target Programme on Hunger Eradication, Poverty Reduction and Jobs for 2001-2005* and the *Programme on the Prevention of Prostitution in the period 2001-2005*. However, the Committee expressed concern at the possible overlap between the agencies and between the various plans of action and programmes related to children's issues.²⁸

With respect to international and domestic child law, the Committee commented positively upon the State party's ratification, in September 2001, of the Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography, as well as its ratification, in December 2000, of ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. The Committee, while taking note of the many amendments to domestic legislation, regulations and decrees, remained concerned that domestic laws did not yet fully comply with the provisions and principles of the Convention itself, in particular in the area of juvenile justice.²⁹

The Committee also noted with concern that budgetary allocations for children were insufficient to respond to national and local priorities for the protection and promotion of children's rights, in particular for the development of health infrastructure and education in remote and mountainous areas. The Committee was also concerned that there was no system of data collection on child labour or children with disabilities and that the data available on child abuse was not comprehensive. Finally, the

27 "Concluding Observations : Viet Nam", UN Doc., CRC/C/15/Add.200, 18 March 2003

28 ibid

29 ibid

Committee noted that the coordination of the activities undertaken by NGOs was not fully effective and despite the activities of the Government, children, and the public at large – as well as all groups of professionals working with and for children – were insufficiently aware of, or inadequately comprehended, the Convention and the rights-based approach enshrined therein.³⁰

3.2 Application of the CRC's Non-Discrimination Principles

In its alternative report to Viet Nam's second submission to the Committee on the Rights of the Child, the Asian NGO, Asian Indigenous and Tribal Peoples Network, criticized the Government for failing to reveal the **discrimination against children belonging to indigenous mountain peoples**, also known as the *Degar* people, in the Central and Northern highlands of Viet Nam. The NGO's alternative report notes: "Discrimination against ethnic minorities and their assimilation into the majority *Kinh* society pervades the Viet Nam Government's policies and programmes towards indigenous peoples, especially in the Northern and Central Highlands."³¹ The report further states: "The indigenous peoples, who are Protestants, are victims of inherently discriminatory policies of the Government of Viet Nam such as sponsored population transfer of the *Kinh* majority into the lands of indigenous peoples, appropriation of ancestral lands and suppression of religious freedom. Indigenous peoples' children too face discrimination because of their ethnic origin or simply because of their inability to speak the majority *Kinh* language."³²

Similarly, in reviewing Viet Nam's report, the Committee on the Rights of the Child noted with concern that the country's domestic legislation did not specifically prohibit discrimination based on all the grounds listed under article 2 *et al.* of the Convention. Moreover, the Committee noted that the lower level of development indicators for ethnic minorities appears to indicate the existence of some level of societal and institutional discrimination, specifically with regard to their access to health and education.³³ As a result, the Committee recommended that the country amend domestic legislation to ensure that it corresponds fully with all the provisions of the Convention, as well as strengthen efforts to eliminate disparities in the accessibility and quality of health care and education

30 *ibid*

31 "Discrimination against the children of indigenous Degard people in Viet Nam: An alternate report to the Committee on the Rights of the Child on the 2nd period report of Viet Nam", Asian Indigenous and Tribal People's Network, 22 January 2003

32 *ibid*

33 "Concluding Observations : Viet Nam", UN Doc., CRC/C/15/Add.200, 18 March 2003

between regions and ethnic minorities. The Committee also encouraged the Government to conduct a study, in collaboration with ethnic community leaders, to determine the extent to which ethnic minority children suffer from discrimination and then develop policies and programmes to address the root causes of any such discrimination.³⁴

The Committee also expressed concern that not all Vietnamese children are registered at birth and that there are, in particular, problems with the birth registration of children living in remote and mountainous regions, where parents are not always aware of birth registration requirements. This echoed the comments of civil society groups that have highlighted the lack of birth registration in the rural and urban settings as a foundational problem.³⁵ The Committee recommended that the State party continue and strengthen its efforts to secure the registration at birth of all children, giving particular attention to children living in rural and mountainous areas.³⁶

In response, the Government of Viet Nam has stated that it has made “particular efforts to reduce the development gap between the regions, ethnic groups and different targeted groups of children”.³⁷ The Government points to its adoption of Agenda 21³⁸ which “demonstrates clearly” its policy of linking economic growth with social progress and justice, and its focus

34 *ibid*

35 Communication between Nguyen Thi Hoang Yen, Program Coordinator, Save the Children Sweden (Viet Nam country Programme Office) and Vrej Atabekian, Project Manager, the International Bureau for Children's Rights, 14 March 2006. Plan Viet Nam has also been actively campaigning for registration of all Vietnamese children equally.

36 “Concluding Observations: Viet Nam”, UN Doc., CRC/C/15/Add.200, 18 March 2003

37 Remarks by H.E. Mrs. Le Thi Thu, Minister and Chairperson of the Committee of Population, Families and Children on Viet Nam's response to the recommendations of the Committee on the Rights of the Child, Hanoi, 6 May 2005

38 Agenda 21 is a comprehensive plan of action to be taken globally, nationally and locally by organizations of the United Nations System, Governments, and Major Groups in every area in which humans impact on the environment. Agenda 21, the Rio Declaration on Environment and Development, and the Statement of principles for the Sustainable Management of Forests were adopted by more than 178 Governments at the United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro, Brazil, 3 to 14 June 1992. The Commission on Sustainable Development (CSD) was created in December 1992 to ensure effective follow-up of UNCED, to monitor and report on implementation of the agreements at the local, national, regional and international levels. It was agreed that a five year review of Earth Summit progress would be made in 1997 by the United Nations General Assembly meeting in special session. The full implementation of Agenda 21, the Programme for Further Implementation of Agenda 21 and the Commitments to the Rio principles, were strongly reaffirmed at the World Summit on Sustainable Development (WSSD) held in Johannesburg, South Africa from 26 August to 4 September 2002. For more information on Agenda 21 visit <http://www.un.org/esa/sustdev/documents/agenda21/index.htm>.

on hunger abolition and poverty alleviation, reduction of the social and economic development disparities between regional areas, assistance for the ethnic minority people in their economic and social activities, and the creation of favourable conditions for vulnerable groups of people to integrate themselves with the community.³⁹ Despite this, some non-government organizations have indicated that there is still a lack of understanding of the CRC's non-discrimination principles and their implications.⁴⁰

With respect to Vietnamese **children with disabilities**, according to the Government of Viet Nam, a majority of families with a disabled member live "an average to poor life"; almost all live in the fold of their families (80% in urban, 70% in rural areas) and approximately 30% have income-generating activities to support themselves and their families. Those with severe disabilities and critical family problems receive social welfare and other support in kind from the community. Although State and community support to people with disabilities is still moderate in terms of quantity, it is nevertheless an important source of income. Furthermore, the Government has stated that 35.8% of people with disabilities are illiterate; 25.36% have completed primary education; and 21.46% basic secondary education. The Government acknowledged that almost all disabled (97.64%) do not receive any vocational training, except for a limited number in urban areas.⁴¹

In reference to this, the Committee on the Rights of the Child noted with concern that Viet Nam's legislation does not prohibit discrimination against children with disabilities. The Committee was also very concerned at the high proportion of children with disabilities in Viet Nam who do not attend any school, do not have access to vocational training or preparation for employment and have limited access to rehabilitation services, particularly in rural areas.⁴² The Committee therefore recommended that the Government, in accordance with the recommendations

39 Remarks by H.E. Mrs. Le Thi Thu, Minister and Chairperson of the Committee of Population, Families and Children on Viet Nam's response to the recommendations of the Committee on the Rights of the Child, Hanoi, 6 May 2005

40 Communication between Nguyen Thi Hoang Yen, Program Coordinator, Save the Children Sweden (Viet Nam country Programme Office) and Vrej Atabekian, Project Manager, the International Bureau for Children's Rights, 14 March 2006.

41 "The Efforts of Vietnam in Response to the Protection and Promotion of Disabled Persons' Rights and Dignity," remarks by the Minister of Labour, War Invalids and Social Affairs, at the Expert Group Meeting and Seminar on an International Convention to Protect and Promote the Rights and Dignity of Persons with Disabilities, Bangkok, Thailand, 2-4 June 2003.

42 "Concluding Observations : Viet Nam", UN Doc., CRC/C/15/Add.200, 18 March 2003

arising from the Committee's 1997 day of general discussion on children with disabilities, and the Standard Rules on the Equalization of Opportunities for Persons with Disabilities, undertake a comprehensive survey of the number of children with disabilities, including those currently not attending school, in order to assess their educational and vocational training needs, and their access to rehabilitation and other social services. The Committee advised the Government to provide financial assistance to economically disadvantaged children with disabilities in order to ensure their access to rehabilitation services and devices. Expanding existing programmes aimed at improving the physical access of children with disabilities to public buildings and areas, including schools and recreational facilities, while increasing the number of integrated education programmes at pre-primary, primary, secondary and tertiary levels, were also encouraged.⁴³

In response to the Committee's concerns the Government has entered into partnership programs with non-governmental organizations. World Vision Viet Nam, for example, began working with the Government of Viet Nam to respond to issues concerning children in especially difficult circumstances in 1991 and more recently began providing services for children with disabilities. Key government ministries in the establishment of policies and guidelines to assist children with disabilities include the Ministry of Health, Ministry of Education and Training and the Ministry of Labour, Invalids and Social Affairs. These ministries, working with World Vision Viet Nam and other international NGOs, have developed National Plans of Action to support activities for children with disabilities. Community-based rehabilitation (CBR) was seen as potentially effective and cost-efficient intervention and was incorporated into the Government plans. As a result, various agencies, particularly the Ministry of Health, have begun to develop CBR service programs, focused primarily on children living in rural communities. The Rehabilitation Department of the National Paediatric Institute has also played a leading role in the development of CBR in Viet Nam.⁴⁴ Presently, Viet Nam is also beginning to implement two models for the education of disabled children: special education and inclusive education.⁴⁵

43 *ibid*

44 "Community-based rehabilitation of children with disabilities: Expanding the idea of the community", World Vision Viet Nam

45 "The Efforts of Viet Nam in Response to the Protection and Promotion of Disabled Persons' Rights and Dignity", Ministry of Labour, War Invalids and Social Affairs, June 2003

3.3 Application of the CRC's Best Interest of the Child Principles

In 1994 Viet Nam passed Government Decree No. 118/CP, establishing the Viet Nam Committee for Protection and Care of Children (CPCC)⁴⁶, which was subsequently merged into the National Committee on Population, Family and Children in August 2002, as the central mechanism to monitor and coordinate activities related to the protection, care and education of children. Although this body is responsible for advancing the best interest of the child principle, it has been criticized by civil society groups and inter-governmental agencies alike for being severely under-resourced. For example, the Committee on the Rights of the Child noted "with concern" the insufficient level of human resources allocated to this CPCC.⁴⁷ At the same time the Committee suggested the country adopt a **more independent and effective mechanism to monitor the promotion and protection of the best interest of the child**; one that is provided with adequate human and financial resources, and easily accessible to children.⁴⁸ The Government has thus far opted against this.⁴⁹ The lack of an efficient governmental office to monitor the application of the best interest of the child is compounded by the fact that independent human rights organizations are not authorized by the Government to conduct missions in Viet Nam. According to Human Rights Watch in its 2002 report, "The Government did not allow independent associations or human rights organizations to operate in Viet Nam. Contact with international human rights organizations was strongly discouraged and the Government continued to refuse to permit international human rights organizations such as Human Rights Watch and Amnesty International to conduct official missions to Viet Nam."⁵⁰

The Committee on the Rights of the Child also expressed concern that, although acting in the best interests of the child appears to be a priority for the Government, the best interest principle is not expressly included in all legislation concerning children. The Committee recommended that the State party, in accordance with article 3 of the Convention, review and, where appropriate, amend its legislation in order to ensure that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative

46 A government decree is similar to a decision made by a President or Prime Minister in the common law tradition.

47 UN Doc. CRC/C/15/Add.200, 18 March 2003.

48 *ibid*

49 Interview of Ms. Cao Thuy, Deputy Director of the Commission for Population, Family and Children by V. Atabekian, September 2005, Hanoi

50 "World Report 2002", Human Rights Watch, Asia, Viet Nam, 2002

authorities or legislative bodies, the best interests of the child shall be a primary consideration.⁵¹ At the time of the writing of this report, non-government organizations in Viet Nam still suggest that the Government does not have a full understanding of the best interest principle and how it should be applied in domestic law.⁵²

3.4 Application of the CRC's Child Development Principles

In the area of **child health**, following several field projects throughout Viet Nam, Save the Children USA concluded: "While the health status of women and children [in Viet Nam] has improved markedly over the past decade, many challenges remain. The gains of the past decade have not been equally distributed, and many women and children in minority and poor communities still do not have adequate access to quality health care."⁵³ Similarly, in a report on the status of child and maternal health in Viet Nam, Doctors of the World (founded by the late Dr. Jonathan Mann) assessed the situation as follows: "Viet Nam is experiencing a serious and growing crisis in its health care sector. Long-standing problems of poverty and underdevelopment have been exacerbated by fiscal reforms as the country struggles toward a market economy. Yet, as Viet Nam remains one of the poorest countries in the world, fiscal austerity has resulted in widening socio-economic inequities. Ethnic minorities – especially women and children – suffer disproportionately from reduced public spending for health and social services and continue to face social discrimination."⁵⁴ The challenges may not only be financial. Save the Children Sweden, for example, has stated that there is confusion in Viet Nam between child development and a child's right to development.⁵⁵ This may be creating further obstacles at the policy level.

In the context of child health, the Committee on the Rights of the Child was concerned that **HIV/AIDS** is spreading and increasingly affecting Viet Nam's children, either because they have been infected or because they may have lost parents to the disease. The Committee advised the Government to consider the Guidelines on HIV/AIDS and Human Rights and integrate respect for the rights of the child into the development and implementation of its HIV/AIDS policies and strategies, with a

51 UN Doc. CRC/C/15/Add.200, 18 March 2003.

52 Communication between Nguyen Thi Hoang Yen, Program Coordinator, Save the Children Sweden (Viet Nam country Programme Office) and Vrej Atabekian, Project Manager, the International Bureau for Children's Rights, 14 March 2006

53 "Asia Program, Country of Viet Nam", Save the Children USA, 2005

54 "Viet Nam Assessment, Doctors of the World", Asia Program, 2003

55 Communication between Nguyen Thi Hoang Yen, Program Coordinator, Save the Children Sweden (Viet Nam country Programme Office) and Vrej Atabekian, Project Manager, the International Bureau for Children's Rights, 14 March 2006

particular emphasis on the Convention's four general principles of non-discrimination, best interests of the child, right to life and respect for the views of the child. The Committee also encouraged the Government to take all effective measures to avoid institutionalization of children infected and affected by HIV/AIDS; and take effective measures to prevent stigmatization and discrimination against children living with HIV/AIDS, in particular through public education campaigns.⁵⁶ The Committee's statements echoed those of the Centres for Disease Control and Prevention's Global Aid Program, which has reported: "The Government [of Viet Nam] now reports HIV cases in all provinces, 93% of all districts, and 49% of all communes; but many high prevalence provinces report cases in 100% of communes." Although Viet Nam has implemented HIV/AIDS case reporting, the general lack of HIV testing thus far suggests that the actual number of HIV infected persons is much higher. HIV prevalence in the general population is estimated to be approximately 0.4%.⁵⁷

For the Government's part, it notes that there are "more than 40 legal documents directly or indirectly governing healthcare for children."⁵⁸ The Government cites its *National Programme of Action for Children 2001-2010*, which provides the administrative state with very specific objectives – including measles vaccinations, immunizations against six basic diseases, promotion of breast-feeding, etc. – to meet by the end of this decade.⁵⁹ The Government also points to a national strategy on nutrition 2001-2010, a national strategy on HIV/AIDS prevention and control which aims to "control the HIV/AIDS prevalence rate among the general population to below 0.3% by 2010 and with no further increase after 2010; to reduce the adverse impacts of HIV/AIDS on social-economic policy."⁶⁰ However, in a working paper on the subject, the Government noted several limitations to effective implementation of their own programs including, inter alia, an inadequate network on health care for children; inadequate policies on children living with HIV and persons caring for children living with HIV and many directive legal

56 "Concluding Observations : Viet Nam", UN Doc., CRC/C/15/Add.200, 18 March 2003

57 "The Emergency Plan in Viet Nam", Centers for Disease Control and Prevention, Global AIDS Program, 15 November 2005

58 "Improving Quality, Access Possibility to Social Services to Bridge the Gap between Areas, Ethnic Groups and Children Groups in Health Care, Mother and Child Nutrition, Basic Education and Children with Special Circumstances" Children's Department, National Committee for Population, Family and Children of Viet Nam

59 "Updated Report on the Implementation of the Convention on the Rights of the Child Period 1998-2002", Socialist Republic of Viet Nam, December 2002

60 "The National Strategy on HIV/AIDS Prevention and Control in Viet Nam till 2010 with a Vision to 2020", The National Committee for AIDS, Drug and Prostitution Prevention and Control

documents that have made law and ordinance unable to take effect promptly.⁶¹

In 2003, the Government of Viet Nam (Social Protection Department of the Ministry of Labour, Invalids, and Social Affairs (MOLISA), in collaboration with UNICEF, conducted an assessment of the situation of families and children affected by HIV/AIDS in Viet Nam.⁶²⁻⁶³ According to a preliminary estimate conducted by MOLISA and the Ministry of Health in 2001, there were 2,838 children infected with HIV, and 265,394 children affected by HIV, including 2,000 double orphans. In 2005, the Government published a report on the major findings of its review and revealed, among other things, that 9.7% of all new HIV cases in Viet Nam are in children 13 to 19 years of age.⁶⁴ Also, in 2005, the Government of Viet Nam (MOLISA) has undertaken a review, with the support of UNICEF, of the country's laws and policies relating to children affected by HIV/AIDS in Viet Nam and their compliance with international standards.⁶⁵

With respect to the child's **physical environment**, in a report filed with the Asia Social Issues Program, an independent expert surmised the situation as follows: "Achieving sustainable development with attention to ecological conservation presents a great challenge for Viet Nam's policy-makers, yet many efforts have been made in the last decade. [...] Despite this, the implementation of environmental management under these new laws has proved rather ineffective." There appears to be a lack of public awareness for the need for environmental protection. Conservation should generally begin at home, but in many areas of Viet Nam, the people's day-to-day activities unintentionally serve to destroy their natural environment.⁶⁶

61 "Improving Quality, Access Possibility to Social Services to Bridge the Gap between Areas, Ethnic Groups and Children Groups in Health Care, Mother and Child Nutrition, Basic Education and Children with Special Circumstances", Children's Department, National Committee for Population, Family and Children of Viet Nam

62 UNICEF/MOLISA (2003). "The Situation of Families and Children Affected by HIV/AIDS in Viet Nam - A National Overview", Hanoi, 30 August 2003.

63 Uhrig, J. (2002). "Situational Analysis of Care and Protection for Children Infected and Affected by HIV in How" Chi Minh City, May 2002.

64 MOLISA/UNICEF (2005). The Situation of Families and Children Affected by HIV-AIDS in Veit Nam, Hanoi, July 2005.

65 Hunte, S.S. (2005). "Children Affected by HIV/AIDS in Viet Nam: A Legal review", Hanoi: MOLISA and UNICEF, April 2005.

66 "Environmental Problems: Development Costs in Viet Nam", Asia Social Issues Program, L. Nguyen, 2006

The Committee on the Rights of the Child too was concerned at the poor environmental health conditions, in particular the low percentage of the population with access to safe drinking water and sanitation facilities, specifically in rural and mountainous areas, as well as the after-effects of Agent Orange and other chemical defoliants. As a result, the Committee recommended that the Government prioritize the construction and expansion of water and sanitation infrastructure in rural and mountainous regions and ensure that all vulnerable groups have equal access to safe drinking water and sanitation. It also recommended that the State party continue its efforts to prevent and combat the damaging effects of environmental pollutants, such as chemical defoliants, on children, including through international cooperation.⁶⁷

While studying the **child in his/her family environment**, the Committee on the Rights of the Child noted with “deep concern” that, as recognized in the State party’s report, family disintegration, including divorce, is on the rise and contributes to the increasing numbers of children in conflict with the law, and of those living on the street and abusing drugs. The Committee was further concerned at the growing gap between rich and poor families, and that poverty puts children at greater risk of exploitation and abuse. As a result, the Committee recommended that the Government strengthen its efforts to develop a comprehensive family policy and improve social assistance and support to vulnerable families by establishing a professionalized system of social workers within communities to provide counselling and assistance. The Committee also advised the Government to consider increasing financial support for economically disadvantaged families, particularly within development and poverty reduction plans for rural and remote areas.⁶⁸

The Government of Viet Nam prides itself on its **education** infrastructure. It notes its diversified system of kindergartens consisting of State-run, semi-State run, private and cooperative facilities. As well, the Government states that it has made efforts to adopt alternative education systems for children who cannot attend formal schools, for dropouts, for disabled, homeless or street children, and for children of the fishing people.⁶⁹ Finally, the Government cites impressive figures including: the ratio of children of the appropriate age going to school has reached 80%; the

67 UN Doc. CRC/C/15/Add.200, 18 March 2003.

68 *ibid*

69 Remarks by H.E. Mrs. Le Thi Thu, Minister and Chairperson of the Committee of Population, Families and Children on Viet Nam’s response to the recommendations of the Committee on the Rights of the Child, Hanoi, 6 May 2005

ratio of children at the age of 6 entering school was 93% in 2003; for the school year of 2003-2004, the ratio of pupils who graduate from primary school reached 99.2% and the ratio of children who graduate from secondary school was 96.1%.⁷⁰

While noting the State party's efforts to achieve universal enrolment at primary school level, the Committee on the Rights of the Child was concerned that there are significant gaps in access to and quality of education between urban and rural or mountainous regions, and that the school system still suffers from a shortage of well-trained teachers and educational materials. In addition, the Committee was concerned with the low enrolment rates in pre-primary education, the high number of repeaters of the first grade and the significant disparity in enrolment in nursery schools between boys and girls. The Committee thereby recommended that the Government take all appropriate measures to increase enrolment in pre-primary education, in particular for girls and in rural areas, and ensure the right to quality, free primary education for all children. The Committee urged the Government to increase the financial assistance provided to students from economically disadvantaged families at all levels, including pre-primary, particularly in rural areas and to recruit and train a greater number of teachers from all ethnic minority groups, while continuing to provide incentives to teachers working in remote and mountainous regions. Finally, the Committee advised the Government to improve the quality of teaching and the curriculum, and the construction and development of school infrastructure.⁷¹

With regard to **the protection of children from commercial sexual exploitation (CSEC)**, the Thailand-based NGO ECPAT International (End Child Prostitution, Pornography and the Trafficking of Children for Sexual Purposes), explains that reports coming out of Viet Nam have suggested that CSEC is increasing and up to 20% of Viet Nam's growing commercial sex industry is comprised of children under the age of 18. As is the case with most countries, commercial sexual exploitation of children in Viet Nam seems to occur at a higher rate in larger urban areas, such as Hanoi and Ho Chi Minh City. ECPAT International notes that reports seem to indicate four major factors leading to the sexual exploitation of children in Viet Nam; namely the economic benefits of the commercial sex trade; unfavourable family situations; lack of awareness of

70 Remarks by H.E. Mrs. Le Thi Thu, Minister and Chairperson of the Committee of Population, Families and Children on Viet Nam's response to the recommendations of the Committee on the Rights of the Child, Hanoi, 6 May 2005

71 UN Doc. CRC/C/15/Add.200, 18 March 2003

laws and appropriate sexual relations; and the changing culture and socio-economic situation in Viet Nam.⁷²

The Committee on the Rights of the Child too noted with concern that a significant proportion of sex workers in Viet Nam are under the age of 18. Prostitution is criminalized in Viet Nam and children who are forced into prostitution are at risk of being treated like criminals. Most of them would normally fear the authorities and not report their victimization to the police. Furthermore, it was concerned that, although the State party recognizes trafficking in children to be a significant problem, the number of officially reported cases was very low. The Committee therefore recommended that the State party continue to strengthen national and sub regional strategies and programmes on the prevention of sexual exploitation and trafficking, and ensure that they take into account the commitments made at the First and Second World Congresses Against Commercial Sexual Exploitation of Children, held in 1996 and 2001, respectively. The Committee also advised the Government to train law enforcement officials, social workers and prosecutors on how to receive, monitor, investigate and prosecute complaints effectively, in a child-sensitive manner; ensure that all victims of trafficking, sexual abuse and exploitation have access to appropriate recovery and reintegration programmes and services that do not stigmatize them. In 2005, the Ministry of Public Safety, in collaboration with UNICEF has begun a program of training for police officers in child-sensitive investigation techniques. In 2006, a similar training program for police officers is on CESEC and on appropriate police interventions and strategies is being implemented by the Ministry of Public Safety with support from UNICEF. A Manual for police officers on human trafficking has also been developed with the support of the UNODC and the Government of Vietnam. Finally, the Committee urged the Government to ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.⁷³ The Government of Viet Nam has recently announced its intention to do so during 2006.

As for **child labour**, the Save the Child Alliance in Viet Nam, which is composed of several different Save the Children country offices, notes that even though Vietnamese law provides general protections for working children, most lack adequate implementing regulations and specific punishment for people who exploit children. Moreover, the Alliance

72 ECPAT International, CSEC Database, accessed 11 January 2006

73 UN Doc. CRC/C/15/Add.200, 18 March 2003

believes that the laws contain far too many loopholes to provide children with the level of legal protection they need. Beyond the current paucity of comprehensive regulations and penalties lies the additional problem that existing laws are not being aggressively enforced.⁷⁴ The lack of effective inspection and enforcement mechanisms is allowing many violators to operate ad hoc, without sufficient accountability or punishment, and is therefore placing working children in a very disadvantageous position. According to a study conducted by IREWOC, the Foundation for the International Research on Working Children, in 2003 children living in rural areas of Viet Nam generally began working by age 6.⁷⁵ While concern over the issue of child labour in Viet Nam is growing, and attitudes are shifting, more concerted efforts are needed to protect Vietnamese child labourers from threats to their health, education, and development. It has been noted by civil society groups that this will ultimately require intensified efforts to address the factors giving rise to child labour for effective prevention, and to develop measures to protect and rehabilitate those who are already victims of exploitative forms of child labour.⁷⁶

When replying to the country's second periodic report, the Committee on the Rights of the Child welcomed the State party's ratification of ILO Convention No. 182, concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour. However, it remained concerned that the incidence of the economic exploitation of children remains widespread in the agricultural sector as well as in gold mines, timber operations, the service sector and other private sector enterprises. The Committee was also concerned at the high number of children living and working on the street. The Committee recommended that the Government ratify and implement ILO Convention No. 138 on the minimum age of employment and develop and implement a comprehensive child labour monitoring system for both rural and urban areas in collaboration with NGOs, community-based organizations, law enforcement personnel, labour inspectors and the ILO International Programme on the Elimination of Child Labour. The Committee also urged the Government to continue strengthening the National Plan of Action for Children in Difficult Circumstances (1999-2002) and, as previously

74 "Child Labour", Save the Children Alliance, Child Abuse Program

75 "Children and Development in Viet Nam", IREWOC, 2003

76 Although it is unclear whether there has been a reduction in the amount of children working in Viet Nam, Save the Children Sweden has suggested the figures may have changed since the government ratified ILO 138: Communication between Nguyen Thi Hoang Yen, Program Coordinator, Save the Children Sweden (Viet Nam country Programme Office) and Vrej Atabekian, Project Manager, the International Bureau for Children's Rights, 14 March 2006

recommended, undertake a study on why children are living and working on the street, in order to develop strategies to effectively address the root causes of this phenomenon.⁷⁷ A study on the root causes of child labour has yet to be undertaken.⁷⁸

Given the above realities, Viet Nam has recently set forth for itself 11 general and 32 specific goals stemming from the **United Nations' Millennium Development Goals**,⁷⁹ including: Reduce by 40% the proportion of people living below an internationally accepted poverty line between 2001 and 2010; increase net enrolment in primary school to 97% by 2005 and to 99% by 2010; eliminate the gender gap in primary education (ratio of girls to boys in primary education is 99% in 2001); and reduce the under-5 mortality rate to 36 per 1,000 live births by 2005 and 32 by 2010.⁸⁰ In August 2005, the Government released a progress report titled, "Viet Nam Achieving the Millennium Development Goals".⁸¹ Amongst other achievements from 2001-2005, the report notes that Viet Nam has been "highly successful" in reducing poverty and alleviating hunger and the country can claim "remarkable achievements" in education and training. The document also explains that Viet Nam has achieved "notable results" in promoting gender equality; child health care has improved "dramatically"; women's health during pregnancy and birth-giving has been "significantly" improved; and the Government's approach to HIV/AIDS prevention and control has "evolved".⁸²

3.5 Application of the CRC's Child Participation Principles

Viet Nam is very proud of a program called the Junior Reporter Club. In 2004, UNICEF increased its support to, and media training for, the 15 Junior Reporter Clubs it supports in cooperation with the Viet Nam Youth Union and Radio Voice of Viet Nam. A ten-day television and editing production workshop was held with three of the country's clubs. Their programmes were then broadcast on national television and the clubs are continuing programme making. In addition, a Junior Reporters

77 UN Doc. CRC/C/15/Add.200, 18 March 2003.

78 Communication between Nguyen Thi Hoang Yen, Program Coordinator, Save the Children Sweden (Viet Nam country Programme Office) and Vrej Atabekian, Project Manager, the International Bureau for Children's Rights, 14 March 2006.

79 Remarks by H.E. Mrs. Le Thi Thu, Minister and Chairperson of the Committee of Population, Families and Children on Viet Nam's response to the recommendations of the Committee on the Rights of the Child, Hanoi, 6 May 2005

80 "Viet Nam Country Report", 7th East Asia and Pacific Ministerial Consultation, Siem Reap, Cambodia, 22-25 March 2005

81 "Viet Nam Achieving the Millennium Development Goals", Socialist Republic of Viet Nam, August 2005

82 *ibid*

conference was held, where members met to exchange information, assess progress since the inception of the clubs and plan future activities.⁸³

Several non-government organizations based in Viet Nam have initiated projects to encourage greater child participation. The Save the Children Alliance, and in particular Save the Children Sweden, have held child-friendly consultations at the district, provincial and national levels. Through these forums children from different backgrounds (i.e., rural/urban, majority/minority, in/out of school, etc.) speak out on issues of concern to them, often with government policy makers in attendance. Unfortunately, there is often a lack of follow-up by those same policy makers. At the same time however, efforts have been made to raise public awareness about child participation and build capacity amongst groups working on the frontlines. As a result of these efforts, some non-government organizations have started to structure programs from the perspective of child, including them in the planning, implementation and evaluation stages.⁸⁴

Despite the advancements made with respect to the child participation, the Committee on the Rights of the Child expressed concern that traditional attitudes towards children in Vietnamese society still limit the respect for their views, within the family, schools and society at large. In addition, administrative and judicial proceedings are not always required to take the views of the child into account, for instance in the case of divorce hearings. As a result, the Committee recommended that the State party carry out awareness-raising campaigns aimed at, inter alia, parents, teachers, government administrative officials, the judiciary and society at large, on children's right to have their views taken into account and to participate in all matters affecting them. The Committee also urged the Government to take legislative measures to guarantee that in all court and administrative proceedings affecting them, children have the right to express their views and have those views taken into account regarding children. Finally, the Committee advised the Government to promote and facilitate, within the courts and all administrative bodies, respect for the views of children and their participation in all matters affecting them, in accordance with article 12 of the Convention.⁸⁵

83 "Some of the Child Participation Initiatives in the East Asia and Pacific Region based on the UNICEF 2004 Country Reports", UNICEF, Adolescent Development and Participation Unite, Programme Division

84 Communication between Nguyen Thi Hoang Yen, Program Coordinator, Save the Children Sweden (Viet Nam country Programme Office) and Vrej Atabekian, Project Manager, the International Bureau for Children's Rights, 14 March 2006.

85 UN Doc. CRC/C/15/Add.200, 18 March 2003

3.6 Application of Other Principles Worthy of Note

With respect to **juvenile justice**, when reviewing Viet Nam's second periodic report, the Committee on the Rights of the Child noted the amendments made in 1999 to the Criminal Code in the area of juvenile justice. However, it also expressed concern that the juvenile justice system in Viet Nam is unable to cope effectively with increasing youth crime and that rehabilitation and reintegration services for young offenders are insufficient. The Committee recommended that the State party ensure the full implementation of juvenile justice standards, in particular articles 37, 40 and 39 of the Convention, as well as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), in the light of the Committee's 1995 day of general discussion on the administration of juvenile justice. The Government was also encouraged to adopt a separate legal code for juvenile justice and establish a system of juvenile courts, while improving conditions in juvenile detention centres and ensuring that deprivation of liberty is used only as a last resort. The Committee advised the Government to expedite the development of a system for the provision of appropriate rehabilitation and reintegration services and increase the number of professional social workers providing such services to young offenders and ensure that all children accused of having violated the law have legal counsel or other appropriate assistance.⁸⁶ A UNICEF funded project in cooperation with the Ministry of Public Security is currently developing some proposed guidelines for diversion, restorative justice responses and social reintegration measures.

A follow-up study by UNICEF quotes a statistic from the 1990s suggesting there were 11,000 to 14,000 juvenile offenders in Viet Nam at the end of the 20th century. From 1995 to 2003, the number of juvenile offenders administratively placed in reform schools increases by 9.4%. The total number of juveniles administratively sanctioned through placement in reform schools in 2003 was 2203. According to the Supreme People's Procuracy, from 2000 to 2003, 12,340 juveniles have been criminally charged, while 8,929 juveniles have been prosecuted and 8,620 juveniles adjudicated. On average, the country has about 4,100 juveniles criminally charged annually. This number is rather high compared to the 1990s. In 2002, 4504 children were charged with a crime.⁸⁷ In 2001, 317

⁸⁶ UN Doc. CRC/C/15/Add.200, 18 March 2003

⁸⁷ The Ministry of Justice, Law Research Institute and UNICEF (2005) "A Report on the Situation of Analysis of Juvenile Justice in Viet Nam and Evaluation of the Contemporary Juvenile Justice System". Hanoi: UNICEF, March 2005.

cases with prison sentences longer than five years for juvenile offenders were registered.⁸⁸

In a working paper titled, "Continuously Harmonize Legal and Convention Systems, Especially Juvenile Justice," the Government of Viet Nam set out three objectives when legislating for young offenders: the principle on educating and assisting children who commit administrative violations; the principle on distinguishing the ages of offenders, specifically youth 14 and under, youth 14 to 16 and youth 16 and older; and the principle of community responsibility so that the offenders can better learn the consequences of their behaviours while the Government protects its cities. Based on these pillars, the government document concludes: "It can be said that [these are the] basic political and legislative foundations necessary for the full and comprehensive implementation of international commitments of Viet Nam and furthermore [...] the guarantee for the future of the country, the comprehensive development of the Vietnamese people, ensuring an equal, democratic and civilized society."⁸⁹ Further, according to the amended law on Child Protection, Care and Education (2004), children are eligible for legal aid, improving their access to justice.⁹⁰

The Government of Viet Nam (CFPC) and UNICEF have launched a national juvenile justice indicator system which is human rights-based and will produce national data on 10 clusters of juvenile justice indicators, including in total some 42 distinct indicators disaggregated by gender, age, and region. Another project is now ongoing which will develop a number of national child protection indicators, some of them focusing on the commercial sexual exploitation of children.⁹¹

Another issue worthy of note is the amount of Vietnamese **children affected by war**. The Viet Nam War (1957-1975) left the country plagued with landmines and other explosive devices. These mines are a danger for children who often play in fields that still have non-detonated bombs

88 "A Human-Rights based Approach to Programming for Children and Women in Viet Nam", UNICEF, August 2004.

89 "Continuously Harmonize Legal and Convention Systems, Especially Judicial Juvenile", Legislative Department, National Committee for Population, Family and Children for Viet Nam

90 The regulations on legal aid were being drafted at the time of the writing of this report and are scheduled to be submitted to the National Assembly by mid-2006: Communication between Nguyen Thi Hoang Yen, Program Coordinator, Save the Children Sweden, Viet Nam country Programme Office, and Vrej Atabekian, Project Manager, the International Bureau for Children's Rights, 14 March 2006.

91 UNICEF and CPFC Viet Nam (2006). "Juvenile Justice Indicators for Viet Nam", May 2006.

planted underground. In this context, it should be mentioned that Viet Nam is not a party to the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction.⁹² Although recruitment of persons below the age of 18 into the armed forces is prohibited the law does stipulate that in case of an “urgent need for safeguarding national independence, sovereignty, unity and territorial integrity,” persons below 18 could be recruited. In 2004, compulsory military service was not enforced but the law appears to allow for boys 16 years old and over to be conscripted. It is not known whether any person below 18 was serving in the armed forces in 2004.⁹³ Viet Nam has signed and ratified the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

4.0 Overall Assessment

When assessing the status of children's rights in Viet Nam it is important to remember that the country is a socialist republic. As such, political reform of any kind will only occur within the parameters that have been established for that purpose by the State. Although the Government's 1986 *Doi Moi* policy, coupled with recent amendments to its Constitution in 1992, appears to have democratized Viet Nam to some degree, there is still limited civil society participation and freedom of the press. As such, advancing and monitoring the rights of the child is a challenge for activists inside Viet Nam, as well as external actors. It is also necessary to keep in mind that Viet Nam is still a very poor country. Despite economic improvements in the last decade, the Human Poverty Index (HPI-1)⁹⁴ value for Viet Nam is only 21.2%, which ranks it 47 among 103 developing countries for which the index has been calculated.

No doubt Viet Nam has demonstrated a commitment to the rights of the child evidenced by the fact it has made sincere efforts to incorporate many of the rights outlined in the Convention on the Rights of the Child

92 “States not Parties”, International Campaign to Ban Landmines

93 Child Soldiers Global Report 2004, Coalition to Stop the Use of Child Soldiers, 2004

94 The Human Development Index measures the average progress of a country in human development. Human Development Report 1997 introduced the human poverty index (HPI), which focuses on the proportion of people below a threshold level in basic dimensions of human development - living a long and healthy life, having access to education, and a decent standard of living, much as the poverty headcount measures the proportion of people below a certain income level. The HPI-1 measures human poverty in developing countries.

into its country strategies, plans of actions, and decrees. Further, it has worked in cooperation with UNICEF at the international, regional and country levels, and some non-governmental organizations, including World Vision, Save the Children and Plan International. (It is important to note, however, that these NGOs are humanitarian/relief organizations rather than human and children's rights organizations, *per se*.) The Government has also submitted its CRC reports to the Committee on the Rights of the Child with some regularity, and has just completed its initial report under the Optional Protocols. In many ways it meets its obligations in this regard with greater frequency than other State Parties. Finally, the Government itself has been candid with respect to its limitations to fulfil all of the requirements as outlined by the Convention and the Concluding Observations of the Committee on the Rights of the Child.

After reviewing the documentation collected from the Government, NGOs operating inside and outside Viet Nam, and from the United Nations, the following points can be interpreted from the materials. First, it appears that the Government is much more inclined to support the economic, cultural and social rights of its children than their civil and political rights. As a result, the Government has focused its attention on education, and to a lesser degree health, rather than attempting to meet the international standards in the area of juvenile justice, religious freedom, or protections from discriminatory practices. This fact is particularly troubling for the minority groups in Viet Nam, such as the Indigenous tribes that live outside the urban centres. Second, since the Government is working within the confines of a very limited budget, choices are constantly being made on spending and items on the children's agenda are continually being prioritized. The children who seem to suffer the most from the Government decisions in this regard seem to be children with disabilities, religious and visible minority children, and children in especially difficult circumstances, such as those who are vulnerable to child labour or commercial sexual exploitation. Further, because of the country's history, civil society groups have not been overly active in supplementing the Government's efforts. Third, the Government's attitude to children differs markedly from its attitude towards adults. Much of the literature that reviews human rights abuses taking place in the country, for example, appears to focus on adults. Perhaps for cultural reasons, as well as political ones, it would appear that the Government treats its youngest citizens differently than its adult population.

Viet Nam does have a plan to move forward on children's rights. In fact, the country has several plans to manage poverty, hunger, malnutrition, trafficking, street children, etc. It will remain to be seen if the Government can be successful in coordinating, implementing and monitoring these plans.⁹⁵ Unfortunately, since independent human rights groups have difficulty entering Viet Nam to evaluate the Government's work, the United Nations will need to ensure compliance with additional support from the international children's rights community outside of the country.

95 The lack of coordination between sectors, coupled with a lack of independent monitoring systems, has been highlighted as a challenge facing the implementation of many government policies. (Communication between Nguyen Thi Hoang Yen, Program Coordinator, Save the Children Sweden, Viet Nam country Programme Office, and Vrej Atabekian, Project Manager, the International Bureau for Children's Rights, 14 March 2006.

Abbreviations

CERD	Committee on the Elimination of racial Discrimination
CRC	Convention on the Rights of the Child
CSUCS	Coalition to stop the use of child soldiers
GDP	Gross domestic product
IMR	Infant mortality rate
ILO	International Labour Organization
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations Children's Fund
UNRWA	United Nations Relief and Work Agency

Contact details**Vrej Atabekian**

Programme Manager
International Bureau for Children's Rights
1185 Saint-Mathieu
Montreal
H3H 2P7
Quebec
Canada
Tel: +1 514 932 7656
Fax: +1 514 932 9453
E-mail: v.atabekian@ibcr.org
Website: www.ibcr.org

