Protecting the Least Respected: The Girl Child and the Gender Bias of the Vienna Convention's Adoption and Reservation Regime

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AND THE GENDER BIAS OF THE VIENNA CONVENTION'S
ADOPTION AND RESERVATION REGIME

Your children are not your children
They are the sons and daughters of life's longing for itself
They come through you but they are not from you
and though they are with you
They belong not to you
You can give them your love
but not your thoughts
They have their own thoughts
They have their own thoughts
You can house their bodies
but not their souls
For their souls dwell in a place
of tomorrow
Which you cannot visit
not even in your dreams
You can strive to be like them
But you cannot make them just like you
Strive to be like them
But you cannot make them just like you.¹

The following two articles in this issue provide an interesting
contrast in viewpoints, both equally compelling, on the Children's

¹. SWEET HONEY IN THE ROCK, On Children, on Breaths (Flying Fish Records 1981)
(music by Ysaye Barnwell, 1980) (lyrics from Kahlil Gibran, On Children, in The Prophet
17 (1963)).
Convention and the Women's Convention. Professor William Schabas' article demonstrates how the reservation regime of the Vienna Convention on the Law of Treaties has undermined the effectiveness of both Conventions. Cynthia Price Cohen reminds us of the significance of the Children's Convention as a "feminist landmark," specifically with reference to its protection of the girl child. Both suppositions are unequivocally proven. While there is justification for great optimism in the widespread adoption of both Conventions, there is also cause for great concern in the widespread adoption of reservations, which nullify the protections provided by these Conventions. The issues revealed by Price Cohen and Schabas are representative of one of the many paradoxes of human rights law.

This paradox illustrates how deeply ingrained gender bias in seemingly neutral legal principles of public international law often impedes the growing recognition of women's and children's rights. As Professor Schabas remarks, the reservation regime of the Vienna Convention is ill-suited to human rights treaties generally. The effect of Article 20(3) is to allow self-judging reservations that are incompatible with the object and purpose of human rights conventions, over the objection of more conscientious states. The only alternative under the Vienna Convention is that the objecting state object to the entry into force of the convention between it and the reserving state. The decision to object, however, precludes any such conscientiously objecting state (that is, the states most likely to monitor ongoing compliance with the relevant treaty) from having any rights against the reserving state.

This problem runs even deeper when evaluated from the perspective of women's rights, children's rights, and specifically the rights of the girl child. In an ironic twist of history, the reservations regime of the Vienna Convention originated in a progressive modification of the law of reservations intended to

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4. See Schabas, supra note 2.


6. See id. at art. 20(4)(b).

7. Cf. id. at art. 21(3) (stating when an objection precludes entry of a treaty into force between parties).
facilitate implementation of human rights norms. In the Reservations to the Genocide Convention Case, the International Court of Justice (ICJ) departed from earlier international practice, which required unanimous consent of all the parties before a treaty reservation could take effect. The practical effect of this unanimous consent rule was to limit the number of parties willing to accept a treaty, severely undermining the effectiveness of multilateral treaties such as the Genocide Convention, for which universal or near universal adoption is so critical. What the Court did not address was the acceptable breadth of reservations. No state was proposing a reservation to the Genocide Convention, stating that the purposeful destruction of an ethnic group was exempt, while destruction of the other protected groups under the Convention was not. Such a reservation was unthinkable.

Yet that is precisely the nature of the reservations being made to the Women's and Children's Conventions. It is a measure of how deeply imbedded the exploitation of women and children is in international society that these reservations have not provoked the level of outrage that a reservation exempting a particular protected group under the Genocide Convention undeniably would. Exploitation of women and children is universal; it crosses all boundaries of nationality, ethnicity, religion, economic status, race, and political affiliation. Universal discrimination necessitates universal eradication. As Professor Schabas points out, the objections to the reservations to the Children's Convention have been made by far fewer states than is the case with the Women's Convention, and there have been virtually no objections to specific reservations to distinct provisions of the Children's Convention. In contrast to the American political rhetoric of "family values" and literary testaments to the child, children are the most disadvantaged and least protected group in international society. The prohibition on slavery, the treatment of human beings as property, is jus cogens in international law, yet children continue to be viewed as the property of parents.

The treatment of children as property is most severe in the case of the girl child. She is bartered as property in marriage contracts, traded as an article of commerce for sexual exploitation, and mutilated in accordance with cultural practices to make her

marketable for marriage. Although male children may be considered property as well, they are considered *valuable* property. Girl children, in contrast, are *disposable* property: provided less, fed less, and killed if necessary to provide for the male child. In short, girl children have the most to lose from anything less than universal, meaningful adoption of the Children's Convention.

Ultimately, as Cynthia Price Cohen cogently argues, the rights of the Women's Convention are unlikely to be achieved if the status of the girl child is not elevated to the level demanded by the Children's Convention.10 Attached to this introduction is a version of the Children's Convention she prepared focusing only on those provisions addressed to the girl child.11 A comparison of those provisions to the articles for which reservations have been made suggests that many of these reservations, not surprisingly, may have been made specifically to restrict the rights of the girl child or will, at the very least, have a disparate impact on the rights of the girl child. Removal of these reservations must be a priority not only for children's rights advocates, but for women's rights advocates as well, on par with removal of the objectionable reservations to the Women's Convention. Similarly, children's rights advocates must recognize that children, and most particularly the girl child, are unlikely to realize their full potential in households and cultures in which women's rights are obstructed.12

How can this be done? Professor Schabas outlines the review process of reservations proposed by the Human Rights Committee.13 This review process, already opposed by the United States, would be an important and necessary step in curbing abuse of the reservation regime of the Vienna Convention with human rights treaties generally. Utilization of the ICJ to evaluate objections would be preferable insofar as it is less subject to accusations of political motivation than the Committee on which representatives act in their governmental, rather than personal, capacities. The numerous reservations, however, to

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10. See Price Cohen, supra note 3.
11. See the Appendix following this introduction.
12. For a thoughtful analyses of the compatibility of the two Conventions, see generally Savitri Goonesekere, *Women's Rights and Children's Rights: The United Nations Conventions as Compatible and Complementary International Treaties*, UNICEF INNOCENTI OCCASIONAL PAPERS (CRS 1) (1992) (suggesting that the divergence in cultural rights and customary and religious laws may be resolved through the development of a uniform legal value system).
acceptance of the Court's jurisdiction under both Conventions impedes this option.

The European Convention on Human Rights suggests another possible approach. Although Article 64 allows for reservations, reservations may be made only with respect to any specific laws of the reserving state "then in force" that are incompatible with the Convention; the Article prohibits reservations "of a general character."14 The state party must accompany any proffered reservations with a "brief statement of the law" justifying the reservation.15 In Belilos v. Switzerland, the European Court of Human Rights invalidated a reservation under Article 64, and yet concluded that the reserving state of Switzerland continued to be bound by the Convention.16 An amending protocol to the Women's and Children's Conventions, assuming feasibility of adoption, would eliminate objections to the Human Rights Committee overstepping its bounds in deviating from the Vienna Convention regime, while preserving the states' option to withdraw acceptance of the Conventions if the incompatible reservations are indeed an indispensable condition to acceptance of the treaties. Nothing is lost by withdrawal of states with no intention of substantial compliance with the treaties.

If the committees take a principled stance of reviewing the validity of reservations, they may find support for their authority in the ICJ's decision in the Genocide Reservations Case. The Court noted that the concept of universal, unqualified, acceptance was "inspired by the notion of contract ...."17 The Genocide Convention (as is true of all human rights treaties) was a departure from the traditional treaty between states regulating conduct between states, which is more akin to a contract and susceptible to principles of contractual analysis. The Court states emphatically that "the character of a multilateral convention, its purpose, provisions, mode of preparation and adoption, are factors that must be considered in determining, in the absence of any express provision on the subject, the possibility of making reservations, as well as their validity and effect."18 The possibility of making reservations is a distinct and separate determination

15. See id. at art. 64(2).
17. Genocide Reservations, supra note 8, at 21.
18. Id. at 22 (emphasis added).
from the validity and effect of reservations. The very factors which call for flexibility in allowance for reservations—a need for universality and a humanitarian purpose—necessitate scrupulous review of the validity of reservations using an objective standard and an impartial arbitrator. The regime of the Vienna Convention departed from the outdated notion of a treaty as a contract between states in all cases, but then reverted to this outdated notion in allowing the reserving state to determine the validity of its own reservations, limiting avenues of recourse even for objecting states. In contrast, the ICJ contemplated that the nature of a treaty determined the acceptability of reservations:

In such a convention [as the Genocide Convention] the contracting States do not have any interests of their own; they merely have, one and all, a common interest, namely, the accomplishment of those high purposes which are the raison d'être of the convention. Consequently, in a convention of this type one cannot speak of individual advantages or disadvantages to States, or of the maintenance of a perfect contractual balance between rights and duties. The high ideals which inspired the Convention provide, by virtue of the common will of the parties, the foundation and measure of all its provisions.19

A contractual approach in the human rights context is entirely inappropriate.

More generally, there is a continuing need for “globalization” of feminist theory in international law. Much of feminist legal discourse is inextricably grounded in Western jurisprudence and culture, subjecting it to many of the same criticisms leveled at human rights law.20 There have been some unfortunate consequences as a result of this limitation of feminist discourse. For example, advocacy for the Children's Convention by women's rights advocates has been tempered by concern that linkage of children's rights with women's rights is a regression to a time in industrialized countries when the two groups were linked to control women in a patriarchal society.21 The preoccupation of some feminist scholarly debate with characterization of male

19. Id. at 23.
reasoning as universal and abstract,22 largely predicated on psychological studies in Western culture,23 has unfortunate repercussions for women's rights advocates calling for universalization of women's rights in the face of conflicting cultural and religious traditions. Frances Olsen has posited that there are four feminist perceptions of children's rights: the legal reformist, law as patriarchy, feminist critical legal theory, and post modern feminism. She concludes, however, that "[n]one of the approaches fully explains [her] own view of the Convention, which is generally positive."24 Universalism can be a camouflage for cultural chauvinism, but it does not have to be. If advocated universal norms are carefully scrutinized before final formulation for cultural bias, derogation from such norms becomes more suspect as a subterfuge for perpetuation of the status quo. At that point, as Karen Engle has forcefully argued,25 different strains of feminist and human rights discourse may benefit from mutual interaction in the overriding pursuit of the end of oppression.

The first step with any human rights treaty is widespread adoption; the second step is meaningful implementation. The shift from theoretical debate to strategy of implementation is particularly pronounced with women's rights, whatever the doctrinal perspective.26 It is not surprising, therefore, that the prominent scholars contributing to this issue have turned their attention to implementation from two very different perspectives.

Sometimes I feel
like a motherless child,
a long, long way from my home.27

We are still a long, long way from home.

Linda Malone, Marshall-Wythe Foundation Professor, William and Mary School of Law

22. See, e.g., Carol Gilligan, In a Different Voice: Psychological Theory and Women's Development (1982).
23. See id.
25. See Engle, supra note 20, at 605-10.
26. See id. at 554.
APPENDIX

RIGHTS OF THE GIRL CHILD AS PROTECTED BY THE CONVENTION ON THE RIGHTS OF THE CHILD

Adopted by the General Assembly of the United Nations on 20 November 1989

PREAMBLE

The States Parties to the Present Convention

Considering that in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world;

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom.

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance;

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community;

Recognizing that the child, for the full and harmonious development of her personality, should grow up in a family
environment, in an atmosphere of happiness, love and understanding;

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity;

Bearing in mind that the need for extending particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1914; and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959; and recognized in the Universal Declaration of Human Rights; in the International Covenant on Civil and Political Rights (in particular in Articles 23 and 24); in the International Covenant on Economic, Social and Cultural Rights (in particular in Article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children;

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth";

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict;

Recognizing that, in all countries in the world there are children living in exceptionally difficult conditions, and that such children need special consideration;

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child;
Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries;

Have agreed as follows:

**PART I: RIGHTS**

**Article 1: Definition of a Child**

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

**Article 2: Non-discrimination**

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

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

**Article 3: Best Interests of the Child**

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for her well-being, taking into account the rights and duties of her parents, legal guardians, or other individuals legally responsible for her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the
number and suitability of their staff, as well as competent supervision.

**Article 4: Implementation of Rights**

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where need, within the framework of international co-operation.

**Article 5: Parental Guidance and a Child's Evolving Capacities**

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

**Article 6: Survival and Development**

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

**Article 7: Name and Nationality**

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.
Article 8: Preservation of Identity

1. States Parties undertake to respect the right of the child to preserve her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily reestablishing her identity.

Article 9: Separation from Parents

1. States Parties shall ensure that a child shall not be separated from her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to Paragraph 1 of the present Article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.
Article 10: Family Reunification

1. In accordance with the obligation of States Parties under Article 9, Paragraph 1, applications by a child or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under Article 9, Paragraph 1, States Parties shall respect the right of the child and her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11: Illicit Transfer and Non-Return

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12: The Child’s Opinion

1. State Parties shall assure to the child who is capable of forming her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, whether directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.
Article 13: Freedom of Expression

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

   (a) for respect of the rights or reputations of others; or
   (b) for the protection of national security or of public order (ordre public), or of public health or morals.

Article 14: Freedom of Thought, Conscience and Religion

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

Article 15: Freedom of Association

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restriction may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.
Article 16: Protection of Privacy

1. No child shall be subjected to arbitrary or unlawful interference with her privacy, family, home or correspondence, nor to unlawful attacks on her honor and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

Article 17: Access to Appropriate Information

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of Article 29;

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard for the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to her well-being, keeping in mind the provisions of Articles 13 and 18.

Article 18: Parental Responsibilities

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in this Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall
ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

**Article 19: Protection From Abuse and Neglect**

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

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programs to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

**Article 20: Protection of a Child Without Family**

1. A child temporarily or permanently deprived of her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption, or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

**Article 21: Adoption**

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:
(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counseling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavor, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22: Refugee Children

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For his purpose, States Parties shall provide, as they consider appropriate, cooperation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in


order to obtain information necessary for reunification with her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of her family environment for any reason, as set forth in the present Convention.

Article 23: Disabled Children

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with Paragraph 2 of the present Article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including her own cultural and spiritual development.

4. States Parties shall promote, in the spirit of international co-operation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regards, particular account shall be taken of the needs of developing countries.
Article 24: Health and Health Services

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;
(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution;
(d) To ensure appropriate pre- and post-natal health care for mothers;
(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents;
(f) To develop preventive health care, guidance for parents, and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25: Periodic Review of Placement

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection
or treatment of her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to her placement.

Article 26: Social Security

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27: Standard of Living

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programs, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measure to secure the recovery of maintenance for the child from the parents of other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.
Article 28: Education

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

   (a) Make primary education compulsory and available, free to all;
   (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
   (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
   (d) Make educational and vocational information and guidance available and accessible to all children;
   (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29: Aims of Education

1. States Parties agree that the education of the child shall be directed to:

   (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
   (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
   (c) The development of respect for the child's parents, her own cultural identity, language and values, for the
national values of the country in which the child is living, the country from which she may originate, and for civilizations different from her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present Article or Article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in Paragraph 1 of the present Article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30: Children of Minorities or Indigenous Groups

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of her group, to enjoy her own culture, to profess and practice her own religion, or to use her own language.

Article 31: Leisure, Recreation and Cultural Activities

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32: Child Labour

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's
education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

(a) Provide for a minimum age or minimum ages for admission to employment;
(b) Provide for appropriate regulation of the hours and conditions of employment;
(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33: Drug Abuse

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34: Sexual Exploitation

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;
(b) The exploitative use of children in prostitution or other unlawful sexual practices;
(c) The exploitative use of children in pornographic performances and materials.

Article 35: Sale, Trafficking, and Abduction

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.
Article 36: Other Forms of Exploitation

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37: Torture and Deprivation of Liberty

States Parties shall ensure that:

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

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

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

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

Article 38: Armed Conflicts

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavor to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civil population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

**Article 39: Rehabilitative Care**

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegrations shall take place in an environment which fosters the health, self-respect and dignity of the child.

**Article 40: Administration of Juvenile Justice**

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

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

   (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions which were not prohibited by national or international law at the time they were committed;

   (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
(i) To be presumed innocent until proven guilty according to law;
(ii) To be informed promptly and directly of the charges against her, and, if appropriate through her parents or legal guardian, and to have legal or other appropriate assistance in the preparation and presentation of her defense;
(iii) To have the matter determined without delay by a competent, independent and impartial authority of judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account her age or situation, her parents or legal guardians;
(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on her behalf under conditions of equality;
(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority of judicial body according to law;
(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
(vii) To have her privacy fully respected at all stages of the proceedings.

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

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counseling probation; foster care; education
and vocational training programs and other alternative to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41: Respect for Higher Standards

Nothing in the present Convention shall affect any provisions that are more conducive to the realization of the rights of the child and which may be contained in:

(a) the law of a State Party; or
(b) international law in force for that State.