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### Promotion and protection of the rights of children

## Status of the Convention on the Rights of the Child

### Report of the Secretary-General

#### *Summary*

The General Assembly, by its resolution 44/25, adopted the Convention on the Rights of the Child. As at 1 July 2011, the Convention had been ratified or acceded to by 193 States, and 2 States had signed the Convention. By its resolution 54/263, the Assembly adopted two Optional Protocols to the Convention. As at 1 July 2011, the Optional Protocol on the involvement of children in armed conflict had been ratified by 142 States, and the Optional Protocol on the sale of children, child prostitution and child pornography had been ratified by 144 States.

Pursuant to resolution 65/197, the implementation of the rights of children with disabilities is the focus of section IV of the present report, which highlights issues relating to discrimination; data collection; the Millennium Development Goals and disability; the right of children with disabilities to be heard; progress in realizing the rights of children with disabilities and the current global situation; education; health; poverty and social protection; child protection; de-institutionalization; emergencies and humanitarian action; and perspectives on ways forward.

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\* A/66/150.

## Contents

	<i>Page</i>
I. Introduction .....	3
II. Status of the Convention on the Rights of the Child .....	3
III. Implementation of the Convention on the Rights of the Child .....	3
IV. Implementing the rights of children with disabilities .....	4
A. Human rights and children with disabilities .....	4
B. Cross-cutting challenges .....	4
V. Ways forward .....	15

## I. Introduction

1. In its resolution 65/197, the General Assembly requested the Secretary-General to submit to it at its sixty-sixth session a report on the status of the Convention on the Rights of the Child, with a focus on implementing the rights of children with disabilities. The present report is submitted in accordance with that request.

## II. Status of the Convention on the Rights of the Child

2. As at 1 July 2011, the Convention on the Rights of the Child<sup>1</sup> had been ratified or acceded to by 193 States, and two States had signed the Convention.<sup>2</sup>

3. As at 1 July 2011, the Optional Protocol on the involvement of children in armed conflict had been ratified by 142 States, and the Optional Protocol on the sale of children, child prostitution and child pornography had been ratified by 144 States.

## III. Implementation of the Convention on the Rights of the Child

4. During the reporting period, the Committee on the Rights of the Child held its fifty-fifth to fifty-seventh sessions at the United Nations Office at Geneva, from 13 September to 1 October 2010, from 17 January to 4 February 2011 and from 30 May to 17 June 2011.

5. As at 1 July 2011, the Committee has received the initial reports of all but three State parties. All initial reports have been reviewed by the Committee, except two, which are scheduled for the Committee's fifty-ninth session, to be held in 2012. In total, the Committee has received 504 reports pursuant to article 44 of the Convention.

6. Additionally, it has received 86 reports and one second periodic report under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, and 71 reports and one second periodic report under the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.<sup>3</sup>

7. On 17 June 2011, the Human Rights Council adopted, without a vote, the draft text of the third optional protocol to the Convention on the Rights of the Child, drafted by the Open-ended Working Group established to elaborate a communications procedure. The Protocol establishes a new procedure of individual communications and inter-State communications regarding violations of rights set forth in the Convention and its Optional Protocols, as well as an enquiry procedure for grave or systematic violations. The text of the new treaty will be submitted to the General Assembly for approval at its sixty-sixth session.

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<sup>1</sup> United Nations, *Treaty Series*, vol. 1577, No. 27531.

<sup>2</sup> Available from <http://treaties.un.org>.

<sup>3</sup> For the sessions at which the reports were considered, see [www2.ohchr.org/english/bodies/crc/sessions.htm](http://www2.ohchr.org/english/bodies/crc/sessions.htm).

8. The Chair of the Committee will present his oral report to the General Assembly at its sixty-sixth session, addressing major issues related to the work of the Committee during the past year.

## **IV. Implementing the rights of children with disabilities**

### **A. Human rights and children with disabilities**

9. Children with disabilities are one of the most marginalized and excluded groups of children, experiencing widespread violations of their rights. These violations dehumanize them, denying them respect for their dignity, their individuality, even their right to life itself.

10. The past 30 years have witnessed significant action to address these violations. However, only with the Convention on the Rights of the Child, adopted in 1989, were the first explicit provisions relating to the rights of children with disabilities introduced, including a prohibition against discrimination on the grounds of disability (art. 2), and obligations to provide services for children with disabilities, in order to enable them to achieve the fullest possible social integration (art. 23).

11. The Convention on the Rights of Persons with Disabilities, adopted in 2006, further strengthened the rights of children with disabilities. It does not introduce additional rights: human rights are universal and apply to every human being. However, it does impose significant additional obligations on Governments to take action to remove the barriers impeding the realization of rights. It also adopts the social model of disability, and addresses “those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others” (art. 1). The Convention also includes a dedicated article on children (art. 7), outlining the obligation on States to ensure the realization of all rights for children with disabilities on an equal basis with other children, to promote their best interests, and to ensure their right to be heard and taken seriously. It incorporates, within its general principles (art. 3), respect for the evolving capacities of children with disabilities and their right to preserve their identities, and introduces a general obligation (art. 4, para. 3) to consult with children, through their representative organizations, when developing relevant legislation and policies.

### **B. Cross-cutting challenges**

#### **Discrimination**

12. The Convention on the Rights of the Child requires of States parties that all the rights it embodies are ensured and respected without discrimination on any ground, including that of disability, for all children. The Convention on the Rights of Persons with Disabilities establishes non-discrimination and equality of opportunity as general principles (art. 3), and requires that States prohibit all discrimination on the basis of disability and guarantee effective legal protection for persons, including children, with disabilities (art. 5). It also introduces the concept of “reasonable accommodation” requiring States to make necessary and appropriate adaptations to ensure that an individual with a disability can enjoy rights on an equal basis with

others, as long as they do not impose a disproportionate or undue burden. Disability-based discrimination is defined as including any distinction, exclusion, restriction or denial of reasonable accommodation on the basis of disability, which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field (art. 2). The Committee on the Rights of the Child has stressed that non-discrimination should not be interpreted to mean that all children should be treated the same, as long as the criteria for any differentiation is reasonable and objective, and the aim is to achieve a purpose that is legitimate under the Convention on the Rights of the Child.<sup>4</sup> The Convention on the Rights of Persons with Disabilities lends legal force to this interpretation (art. 5, para. 4).

13. However, as noted in general comment No. 9 (2006) of the Committee on the Rights of the Child (see CRC/C/GC/9 and Corr.1) children with disabilities live with discrimination in every aspect of their lives. It arises not from the intrinsic nature of their disability, but rather from entrenched social exclusion resulting from rejection of difference, poverty, social isolation, prejudice, ignorance and lack of services and support. In cultures where disability is viewed as a curse or punishment, a child born with an impairment is blamed as the embodiment of past failure, inadequacy or sins.

14. The full extent of discrimination against children with disabilities is difficult to quantify owing to lack of data. However, its impact can be profound, denying them access to education and health care, opportunities for play and culture, family life, protection from violence, an adequate standard of living and the right to be heard. It can corrode self-esteem and self-confidence as children internalize the negative attitudes they experience on a daily basis. The harmful impact is compounded for children experiencing multiple forms of discrimination, particularly girls with disabilities. The Committee on the Rights of the Child, in its general comment No. 9, requests States to pay particular attention to them to ensure their protection, access to all services and full inclusion in society.

#### **Data collection**

15. Consistent and accurate information is necessary to render children with disabilities visible, inform service delivery and enable more effective monitoring of progress towards the realization of their rights. The Convention on the Rights of Persons with Disabilities requires States to collect appropriate disaggregated information to enable them to formulate policies to give effect to its provisions (art. 31).

16. However, significant limitations exist on the availability of accurate data relating to children with disabilities worldwide, particularly in developing countries. Disability prevalence is the result of a complex and dynamic relationship between health conditions and contextual factors, both personal and environmental.<sup>5</sup> Estimating the global numbers and distribution of children, adolescents and youth with disabilities is therefore extremely difficult, and different estimates have been

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<sup>4</sup> See Marta Santos Pais, "The Convention on the Rights of the Child", in the *Manual on Human Rights Reporting*, (United Nations publication, Sales No. E.GV.97.0.16).

<sup>5</sup> See World Health Organization (WHO) and *World Bank, World Report on Disability*, Geneva, 2011, available from: [http://whqlibdoc.who.int/publications/2011/9789240685215\\_eng.pdf](http://whqlibdoc.who.int/publications/2011/9789240685215_eng.pdf).

published in recent years. Wide variations in prevalence figures are recorded across different countries, revealing differences in definitions and in both capacity and tools for assessment. In some States, only the most severely disabled individuals are identified.

17. Many challenges impede effective data collection: lack of common definitions, classification and thresholds between categories of disability, both within and between countries; reluctance on the part of parents to report their child as having a disability, and lack of understanding disability; and difficulties in identification of certain impairments, as well as acquisition of impairments later in the child's life. Disability-based discrimination and stigma also sometimes inhibit the willingness of survey administrators and participants to address questions related to disability. In addition, difficulties arise in collecting data that reflects the social model of disability.

18. Some steps have been taken to address the current paucity of information. A child disability module, addressed to primary caregivers, has been included, since 2000, in the multiple indicator cluster survey, a household survey programme developed by the United Nations Children's Fund (UNICEF) to assist countries in filling data gaps for monitoring the situation of children and women. The multiple indicator cluster survey can be employed, as a single screening tool, to collect data on disability across a wide range of countries.<sup>6</sup> Data indicate that the percentage of children who screened positive on disability, as reported by primary caregivers, is between 14 per cent and 35 per cent in a large majority of the countries with available data. However, the focus on households does mean that, for example, children with disabilities who live on the streets or those in residential care institutions are not included in the data. The General Assembly, in its resolutions 63/150, 64/131 and 65/186, has stressed the importance of improving disability data and statistics in order to develop internationally comparable indicators and improve the availability of reliable data at the national and global levels for purposes of policy design, planning and evaluation from the disability perspective. However, significantly greater investment is still needed in data collection to begin to build a more effective picture of the reality of the lives of children with disabilities.

### **Millennium Development Goals and disability**

19. All the Millennium Development Goals have relevance to persons, including children, with disabilities. Accordingly, addressing the issues that concern children with disabilities must be acknowledged as key to their attainment. Although some of the background documents explicitly mention people with disabilities, they are not referred to within the Millennium Development Goals, or in the material generated as part of the process to achieve them. However, the Goals will not be achieved if the situation of people with disabilities is not included in associated policies, programmes, monitoring and evaluations.

20. The importance of rendering disability visible has been recognized. The General Assembly has reiterated the commitment of the international community to promote the inclusion of disability in the Millennium Development Goals processes, as well as in other internationally agreed development goals for persons with

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<sup>6</sup> See United Nations Children's Fund (UNICEF) multiple indicator cluster survey, available from: [www.childinfo.org/files/Monitoring\\_Child\\_Disability\\_in\\_Developing\\_Countries.pdf](http://www.childinfo.org/files/Monitoring_Child_Disability_in_Developing_Countries.pdf).

disabilities (Assembly resolutions 60/131, 62/127, 63/150, 64/131 and 65/186). The limited opportunities facing children with disabilities, and the link between disability and marginalization in education are noted in *The Millennium Development Goals Report 2010*. The Assembly, in its resolution 64/131, highlighted the invisibility of persons with disabilities in official statistics. It also concluded the High-level Plenary Meeting of the General Assembly on the Millennium Development Goals at its sixty-fifth session, in September 2010, by adopting a resolution in which the importance of a focus on disability issues was acknowledged.

21. However, a recent review of 50 countries found that people with disabilities often lag well behind national averages of progress on Millennium Development Goals targets, and that the denial of human rights, exclusion, discrimination and a lack of accountability are barriers to the pursuit of human development and the Millennium Development Goals.<sup>7</sup> A human rights approach emphasizing accountability, principles of non-discrimination and equality and the principle of participatory decision-making processes can contribute to overcoming these barriers. All Millennium Development Goals targets and indicators should identify, monitor and evaluate the impact of related policies and programming on the situation of persons, including children, with disabilities.

#### **The right of children with disabilities to be heard**

22. Article 12 of the Convention on the Rights of the Child establishes that all children capable of forming their own views have the right to express those views on all matters of concern to them, including in any judicial or administrative proceedings, and to have these views given due weight in accordance with the child's age and maturity. Not only is it a fundamental human right, but it is necessary as a means of realizing other rights. In addition, the Convention on the Rights of Persons with Disabilities introduces an explicit obligation to provide children with disability- and age-appropriate assistance to enable them to exercise the right to be heard (art. 7).

23. However, it remains difficult for children with disabilities to have their voices heard. Initiatives such as school councils and children's parliaments, consultative processes to elicit children's views, as well as judicial proceedings, commonly fail to ensure the inclusion of children with disabilities, or acknowledge their capacities for participation. Furthermore, decisions such as medical and other interventions are frequently made without the involvement or consent of children with disabilities.<sup>8</sup> Parental overprotection often limits their capacity for emerging independence. Legislation, policy and professional practice need to balance the importance of respecting parents' legitimate protective responsibilities for children with disabilities, where they lack capacity for independent decision-making, with their obligation to respect children's evolving capacities to exercise their own rights (see the Convention on the Rights of the Child, art. 5 and the Convention on the Rights of Persons with Disabilities, art. 3 (h)).

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<sup>7</sup> See "Every woman, every child: recommendations on human rights", background paper for the Global Strategy for Women's and Children's Health, 8 September 2010.

<sup>8</sup> See the Office of the United Nations High Commissioner for Human Rights and WHO, "The Right to Health", Fact Sheet No. 31, Geneva, 2008.

24. The Committee on the Rights of the Child, as well as the General Assembly in its resolution 64/146, have emphasized the need for measures to facilitate the participation of children with disabilities, including through the provision of transport, accessible information, assistive devices, communication aids and interpreters. Training and sensitization are also needed among parents and professionals to strengthen their awareness of the obligation to listen to children with disabilities and take their voice seriously.

### **Progress in realizing the rights of children with disabilities: current global situation**

25. As most countries are still in the process of ratifying the Convention on the Rights of Persons with Disabilities and developing their initial reporting to the Committee on the Rights of Persons with Disabilities, the international community does not yet have access to a baseline against which to measure progress. Therefore, as reporting becomes available and the entire reporting process develops in the coming years, it will become possible to more comprehensively assess progress in realizing the rights of children with disabilities.

### **Education**

26. The Convention on the Rights of the Child asserts the right of every child to education on the basis of equality of opportunity (art. 28), and in a dedicated provision on children with disabilities, places obligations on States to ensure that they have effective access to and receive education in a manner conducive to their fullest possible social integration and individual development, including their cultural and spiritual development (art. 23). The Convention on the Rights of Persons with Disabilities also affirms and elaborates this principle (art. 24).

27. In reality, the challenges faced by children with disabilities in realizing their right to education remain profound. A recent report recognized children with disabilities as one of the most marginalized and excluded groups in respect of education.<sup>9</sup> It confirmed that, overall, international and Government initiatives lacked adequate information and strategies on the issue of disability, despite recognizing it as an area that requires policy attention. These gaps and omissions were perceived as a threat to the overall achievement of education goals.

28. Early education is of particular significance for children with disabilities, many of whom need additional support to compensate for the barriers they face as a consequence of their impairment. However, although data regarding access for children with disabilities is lacking globally, they are least likely to be included in such programmes. Out of 100 million children with disabilities under 5 years of age worldwide, 80 per cent live in developing countries, where the provision of pre-primary education and other basic services tends to be insufficient.<sup>10</sup> Although neither the Convention on the Rights of the Child nor the Convention on the Rights of Persons with Disabilities make explicit reference to early childhood education,

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<sup>9</sup> See “Education: closing the gap”, report of an e-discussion hosted by the United Nations Development Group, in 2011, available from: [www.un.org/en/ecosoc/newfunct/pdf/ediscussion\\_report-26\\_apr\\_2011.pdf](http://www.un.org/en/ecosoc/newfunct/pdf/ediscussion_report-26_apr_2011.pdf).

<sup>10</sup> See “Inclusion of children with disabilities: the early childhood imperative”, United Nations Educational, Scientific and Cultural Organization (UNESCO) policy brief on early childhood, No. 46, 2009.

the Committee on the Rights of the Child, in its general comment No. 7 (2005) (CRC/C/GC/7/Rev.1) interprets the right to education as beginning at birth, and closely linked to the child's right to optimum development.

29. While precise global data on the exclusion of children with disabilities from education do not exist, there is broad consensus that at least one third of the world's 72 million children who are not in school have a disability.<sup>11</sup> In some countries, the gap in primary school attendance rates between disabled and non-disabled children is strikingly wide, excluding the great majority of children with disabilities from the mainstream educational system. Even in relatively well-off States that are closer to the goal of universal primary education, enrolment rates differ according to impairment type, with children with physical impairment generally faring better than those with intellectual or sensory impairments.

30. Among those children with disabilities who do attend school, children with disabilities achieve lower rates of primary school completion and fewer years of education than those without disability. For example, the World Health Survey found that around 50 per cent of boys with disability completed primary school, compared with just over 60 per cent of boys without disability, while primary school completion rates for girls with disability are just under 42 per cent compared with 53 per cent of girls without disability.<sup>5</sup>

31. The barriers are formidable and include discriminatory legislation, institutionalization, lack of training for teachers, prejudice, stigma and inadequate understanding as to the nature of disability on the part of teachers and parents. The overwhelming majority of schools throughout the world are physically inaccessible, affordable and accessible transport is not available, systems for enhancing communication are not in place, and inclusive education itself is frequently misunderstood. Some countries retain legislation declaring certain categories of children to be "uneducable", or place responsibility for the education of children with disabilities with ministries other than education, thus serving to segregate and marginalize them.

32. The Committee on the Rights of the Child, in the report on its sixteenth session (CRC/C/69, para. 338), identified the need for action to bring an end to segregation in education, and has consistently recommended the development of inclusive education systems in its concluding observations.<sup>12</sup> It has further stressed that inclusive education must be the goal of educating children with disabilities. Since 2002, Education for All partners have committed to promoting a goal of inclusion, as outlined in a UNESCO flagship initiative on "The right to education for persons with disabilities: towards inclusion". Finally, the Convention on the Rights of Persons with Disabilities includes an explicit obligation on Governments to ensure access to inclusive education (art. 24, para. 2 (b)).

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<sup>11</sup> See J. Balescut and K. Eklindh, "Historical perspective on education for persons with disabilities" (2006), quoted in the UNESCO *Education for All Global Monitoring Report 2007*.

<sup>12</sup> See chapters on articles 2 and 23, UNICEF, *Implementation Handbook for the Convention on the Rights of the Child*, New York, 2002.

33. A growing body of evidence is emerging as to the efficacy of inclusion. One study found that while the costs of inclusive education and special schools were largely comparable, academic achievement in inclusive schools was significantly higher.<sup>13</sup> However, placing children within a mainstream setting does not of itself achieve inclusion. Inclusion embodies a principle that schools both accommodate all children regardless of their physical, intellectual, social, emotional, linguistic or other conditions, and also adapt to address their needs.<sup>14</sup> This requires action across the education system, including: legislation; cross-ministerial collaboration; appropriate systems of financing; training of and support for teachers; inclusive teaching methods; promoting respect for diversity and non-discrimination in schools; reviews and adaptation of curricula and resources for teaching in inclusive classrooms; appropriate individualized support; and respect for the right to learn in sign language and through all appropriate forms of communication.

34. Efforts are also needed to remove the physical barriers impeding access to school and subsequent learning. Significant lessons have been learned on design, construction and modification of buildings to assist in the inclusion of children with disabilities. Furthermore, World Bank research has demonstrated that the cost of accessibility is generally less than 1 per cent of total construction costs. There is also an emerging application of universal design in instructional practices, materials and educational environments to meet the wide range of student needs, learning styles and capacities.<sup>5</sup>

35. However, globally, significant additional investment and the use of modern technologies and international cooperation are needed to create the necessary legislative, administrative and budgetary framework to fulfil these educational commitments.

### **Health**

36. Attainment of the highest possible standard of health and access to and affordability of quality health care are inherent rights of every child. Both Conventions affirm the obligations on States to take all appropriate measures to ensure the realization of such rights for children with disabilities. Many countries still conceptualize disability as a chronic medical condition, for which the solutions are health care, rehabilitation, institutionalization or social supports such as special education and pensions. Investment is therefore needed to re-orientate services towards recognition that the barriers across society are a primary cause of the disabling effects of impairments in children.

37. In addition, discrimination, inaccessibility and a lack of targeted health programmes designed to address their specific needs continue to hamper progress in the realization of the right to health for children with disabilities, in many parts of the world. Measures are needed in order to provide targeted services to mitigate the impact of impairments and to develop inclusive, non-discriminatory and accessible services.

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<sup>13</sup> Jennifer Beecham and Martin Knapp, "Inclusive and special education: issues of cost-effectiveness", in *Inclusive Education at Work: Students with Disabilities in Mainstream Schools*, Organization for Economic Cooperation and Development, Paris, 1999.

<sup>14</sup> UNESCO, "Inclusive education: the way of the future", paper prepared for the International Conference on Education, Geneva, 2008.

38. Many children with disabilities require specific medical and social services, designed to minimize and prevent further disabilities, as well as orthopaedic and rehabilitation services, to promote independence and support their social integration, as discussed in general comment No. 5 (1994) of the Committee on Economic, Social and Cultural Rights, and in articles 25 (b) and 26 of the Convention on the Rights of Persons with Disabilities. Psychosocial and intellectual disabilities are often neither diagnosed nor treated, and their significance is generally overlooked. Adequate policies, programmes, laws and resources are lacking. In most countries, care is still predominantly provided in institutions. The move from institutional to community care is slow and uneven. A recent study of mental health systems in 42 low-income and middle-income countries showed that resources for mental health are overwhelmingly concentrated in urban settings.<sup>15</sup> Access to all types of health care for children with psychosocial or intellectual disabilities is complicated by the stigma and discrimination they suffer.

39. A recent report of the Secretary-General (A/64/180) testifies to a prevailing pattern of weak identification of and assessment mechanisms for children with disabilities. Several studies show that while some communities have included children with disabilities in outreach efforts, children with disabilities often do not receive standard immunizations and basic care, even in highly developed countries. Adolescents with disabilities face particular challenges in accessing confidential sexual and reproductive health services and information, including HIV/AIDS services.<sup>16</sup> Yet, infection levels among them are equal to or higher than the rest of the community, one of the main causes being their significant vulnerability to sexual abuse, according to data from the World Health Organization, the Joint United Nations Programme on HIV/AIDS (UNAIDS) and the Office of the United Nations High Commissioner for Human Rights. The common misconception that people with disabilities are not sexually active often leads health professionals to fail to offer them sexual and reproductive health services.<sup>5</sup> In addition, action is needed to bring an end to practices whereby children with disabilities are subject to sterilization or abortion against their will or on the basis of family interests (Convention on the Rights of Persons with Disabilities, art. 23, para. 1 (c)). Health care provided to children with disabilities should be based on free and informed consent, while respecting the autonomy of the child.

### **Poverty and social protection**

40. The Convention on the Rights of the Child places obligations on States to recognize the right of every child to an adequate standard of living for their proper development, to support parents in realizing this right and to take necessary measures to achieve the full realization of every child's right to benefit from social security. The Convention on the Rights of Persons with Disabilities additionally requires States to adopt measures to support children with disabilities living in the community, including through social protection programmes, as well as a duty to make all essential services inclusive of and accessible for persons with disabilities (art. 28).

<sup>15</sup> WHO, *Mental health systems in selected low- and middle-income countries: a World Health Organization Assessment Instrument for Mental Health Systems cross-national analysis*, Geneva, 2009.

<sup>16</sup> See Jane Maxwell, Julia Watts Belser and Darlena David, *A Health Handbook for Women with Disabilities*, Hesperian Foundation, Berkeley, California, United States of America, 2007.

41. Nevertheless, extreme poverty among children with disabilities remains widespread. Approximately 426 million people with disabilities in developing countries live below the poverty line and are often among the 15 to 20 per cent most vulnerable and marginalized poor in such countries. The World Bank has estimated that people with disabilities may account for as many as 1 in 5 of the world's poorest people.<sup>17</sup>

42. The Social Protection Floor Initiative was introduced as a key measure to contribute towards the Millennium Development Goals.<sup>18</sup> There is scope for this initiative to contribute significantly to addressing issues of disability.<sup>19</sup> While the need for efforts to promote inclusion of disability issues in poverty reduction programmes and policies has been highlighted in General Assembly resolution 65/1, too little has yet been done to address this issue.

43. Many health insurance schemes discriminate against persons with disabilities, based on the cost of their health care. Some social protection schemes fail to take into account the extra costs faced by households with a disabled child, who often have to spend more than other families to access goods and services.<sup>20</sup> As schemes are often based on a minimum income or poverty line, the basic disability benefits are commonly insufficient to cover both basic household expenses and extra costs related to disability, leaving families trapped in poverty.<sup>21</sup> In addition, cash transfer and social health protection schemes are often linked to conditions that children with disabilities may not be able to fulfil, for example, when those schemes are conditional on regular attendance at school, from which a child may have been denied access.

### **Child protection**

44. The Convention on the Rights of the Child affirms that all children are entitled to protection from all forms of violence and this is reinforced by the Convention on the Rights of Persons with Disabilities, which introduces specific measures in recognition of the fact that women and girls with disabilities are often at greater risk of violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, as specified in the Preamble to that Convention. The Committee on the Rights of the Child, in its general comment No. 9, made strong recommendations for action to tackle violence against children with disabilities, which were also reflected in the report of the independent expert for the United Nations study on violence against children (A/61/299). The Human Rights Council, in its resolution 7/29, also

<sup>17</sup> Ann Elwan, "Poverty and disability: a survey of the literature", paper prepared for the World Bank, 1999, available from: <http://siteresources.worldbank.org/INTPOVERTY/Resources/WDR/Background/elwan.pdf>.

<sup>18</sup> The Social Protection Floor Initiative seeks to promote universal access to essential social transfers and services, and is managed by the International Labour Organization and WHO, with the support of all other major entities of the United Nations.

<sup>19</sup> See "Social security for social justice and a fair globalization", report VI of the International Labour Conference, Geneva, 2011 (ILC.100/VI).

<sup>20</sup> See Jeanine Braithwaite and Daniel Mont, "Disability and poverty: a survey of World Bank poverty assessments and implications", World Bank, Washington, D.C., February 2008.

<sup>21</sup> Kate Gooding and Anna Marriot, "Including persons with disabilities in social cash transfer programmes in developing countries", *Journal of International Development*, vol. 21, 5, pp. 685-698 (July 2009).

pressed all Governments to enact and enforce legislation protecting children with disabilities against all forms of discrimination, exploitation, violence and abuse.

45. A growing body of evidence highlights the extent to which children with disabilities, throughout the world, are disproportionately at risk of violence, neglect and abuse. A study on violence against disabled children, reporting the findings and recommendations of a meeting convened by UNICEF in July 2005, considered the vulnerability of children with disabilities, and concluded that while violence against children is widespread, disabled children are at significantly increased risk.<sup>22</sup> In the World Report on Violence and Health, it was also noted that children with disabilities “have been shown to be at increased risk for physical abuse and neglect”.<sup>23</sup>

46. Evidence from countries throughout the world reveals a consistent pattern of violence against children with disabilities. For example, an analysis of severe corporal punishment of children with and without disabilities, in 15 countries, found that children with an impairment were significantly more likely to experience severe physical punishment, in nearly half of the countries studied.<sup>6</sup> Children with disabilities are often beaten, stoned, or spat upon on their way to and from school.<sup>22</sup> Bullying is also widespread in many countries.

47. Violence takes place in all settings: the family, schools, the community, the justice system, the workplace and residential care. For families in difficult socio-economic circumstances, or with limited or no social protection or basic services available, the birth of a child with a disability can place the family under considerable pressure, leading to rejection and violence. The problem can be exacerbated for children who are physically dependent on others to provide care, or who have reduced ability to recognize danger or protect themselves. Hostility towards, and fear of, children with disabilities means that they are often hidden away and denied access to other children, to the wider family and to public events, rendering them more vulnerable to violence, and affording perpetrators a high degree of impunity (see A/61/299).

48. Some forms of violence are specific to children with disabilities. They may be subject to abuse under the guise of behaviour modification, including electroconvulsive treatment, drug therapy and electric shocks. The Committee on the Rights of the Child, in its general comment No. 9, has expressed concern about the practice of forced sterilization of girls with disabilities. They can also be exposed to medical or scientific experimentation, abandoned and left to die, or subjected to “mercy killing”, a crime often attracting lower penalties, reflecting the lower value attached to their life.

49. Protection systems and reporting mechanisms are rarely adapted to the needs of children with disabilities. Where they do report, they are often met with barriers and disbelief. The Secretary-General’s Special Representative on Violence against Children, in a joint report with the Special Rapporteur on the sale of children, child prostitution and child pornography on counselling, complaint and reporting mechanisms, paid special attention to the particular challenges faced by children

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<sup>22</sup> Available from: [www.unicef.org/videoaudio/PDFs/UNICEF\\_Violence\\_Against\\_Disabled\\_Children\\_Report\\_Distributed\\_Version.pdf](http://www.unicef.org/videoaudio/PDFs/UNICEF_Violence_Against_Disabled_Children_Report_Distributed_Version.pdf)

<sup>23</sup> Etienne G. Krug and others (eds), *World report on violence and health*, World Health Organization, Geneva, 2002, p. 66.

with disabilities in accessing protection and justice, as well as rehabilitation services (A/HRC/16/56).

### **De-institutionalization**

50. The Convention on the Rights of the Child requires States parties to submit periodic reviews of the treatment of children placed by authorities for the purposes of care, protection or treatment of their health (art. 25). Furthermore, the Committee on the Rights of the Child, in its general comment No. 9, expresses concern about the continued use of residential care facilities for children with disabilities and affirms that they are best cared for within their own families. The Convention on the Rights of Persons with Disabilities clearly states that disability should never justify deprivation of liberty (art. 14). It recognizes the right of children with disabilities to live in the community, backed up with the necessary support and services to make that possible. It requires States to make every effort to ensure that when a family cannot care for a child, the alternative placement is either with the wider family or in a family setting in the community (art. 23), as further elaborated in the Guidelines on the Alternative Care of Children (General Assembly resolution 64/142, annex).

51. The conditions in large residential care institutions can often constitute cruel, inhuman or degrading treatment. Widespread evidence testifies to examples of children permanently tied into cribs and beds, suffering or even death from intentional lack of medical treatment, food or warmth, and lack of love or care.<sup>24</sup> The UN Study on Violence against Children highlighted profound concerns relating to violence, neglect, dangerous environments, including children being left for hours on urine-soaked mattresses, or physically or medically restrained, or of residential care facilities being understaffed and a lack of monitoring or independent scrutiny.<sup>22</sup> Once children are placed in a residential care facility, they often remain there for life with no right of appeal, no independent review mechanism, and no access to information, advice or advocacy.

52. Despite growing awareness of these violations, the number of children with disabilities in residential care remains high. In the Central and Eastern Europe region, UNICEF estimates that a child with a disability is almost 17 times as likely to be institutionalized as one who is not disabled.<sup>25</sup> In many regions, little investment has been made to protect their right to family life. Prejudice, ignorance and discrimination, combined with a lack of community-based support or social security, undermine families' capacities to provide appropriate care and protection for a child with a disability. In many parts of the world, parents who want to keep their children at home receive very limited help or support, or indeed, none at all.<sup>26</sup>

53. Bringing an end to institutionalization is a matter of considerable urgency. Research consistently points to its profoundly negative impact on children, with children under the age of 4 at particularly high risk of cognitive and psychological damage. Children in residential care facilities do far worse socially, educationally, medically and psychologically than children raised in supportive community settings.<sup>22</sup>

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<sup>24</sup> See [www.unicef.org/infobycountry/media\\_27185.html](http://www.unicef.org/infobycountry/media_27185.html).

<sup>25</sup> *Progress for Children: A Report Card on Child Protection* (UNICEF, 2009).

<sup>26</sup> Innocenti Digest No. 13: "Promoting the rights of children with disabilities", (UNICEF, 2007).

### **Emergencies and humanitarian action**

54. The Convention on the Rights of Persons with Disabilities requires States to undertake measures to protect people with disabilities in situations of risk and emergency, and recognizes the importance of international cooperation in addressing the limited capacities of some States to respond to situations of risk and humanitarian crises (arts. 11 and 23).

55. The vulnerability of children with disabilities is often exacerbated by the loss of family members or carers, loss of assistive devices, lack of medication or health care and the inaccessibility of emergency services. Furthermore, in the aftermath of a disaster, children, and particularly girls with disabilities, are vulnerable to violence, exploitation and sexual abuse.<sup>27</sup> However, there is a lack of adequate data about both the extent to which children with disabilities are affected by natural disasters or armed conflict, and their needs in those situations, and this has hampered the development of effective responses. It results in children with disabilities not being prioritized or appropriately included and supported within humanitarian assistance and development programmes.

56. The Office of the United Nations High Commissioner for Refugees has developed guidelines to strengthen the protection of children with disabilities, which recognize the greater risks facing children with disabilities and encourage States to provide appropriate support.<sup>28</sup> It is also producing operational guidance on working with persons with disabilities, including those in displacement, that advocates for inclusive education, child-friendly spaces and early-childhood interventions, and stresses the need for identification and monitoring mechanisms.

## **V. Ways forward**

57. Significant, urgent and coordinated action is needed to achieve the realization of the rights of children with disabilities. The scale and severity of violations against their rights, in all regions of the world, constitute a hidden emergency. It is necessary to remove barriers that impede the realization of the rights of children with disabilities, and recognize the importance of international cooperation for improving the living conditions of children with disabilities in every country, particularly in developing countries. Governments are urged to:

**(a) Introduce measures to strengthen the collection of disaggregated data on children with disabilities in order to promote their visibility, enhance capacity for effective policy and planning, and enable more effective monitoring of their rights, that include:**

**(i) Investment in proactive approaches to overcoming the barriers impeding birth registration and inclusion in census data, in respect of children with disabilities;**

<sup>27</sup> Office of the United Nations High Commissioner for Refugees (UNHCR), “Sexual and gender-based violence against refugees, returnees and internally displaced persons: guidelines for prevention and response”, May 2003.

<sup>28</sup> UNHCR, Conclusion No. 110 (LXI) on refugees with disabilities and other persons with disabilities protected and assisted by UNHCR, 2010, available from: [www.unhcr.org/4cbeb1a99.html](http://www.unhcr.org/4cbeb1a99.html).

- (ii) **Collaboration across Government and with organizations of people with disabilities to achieve a coherent and consistent framework of definitions of disability, in accordance with international human rights standards, as a basis on which to collect data;**
- (iii) **Disaggregation of all relevant data relating to children's lives on the basis of disability, including, for example, in data on education, health outcomes or child protection, and in the reports submitted by the States Parties to the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities with regard to the relevant Conventions;**
- (b) **Implement measures to prevent and eliminate all forms of discrimination against children with disabilities, that include:**
  - (i) **Prohibiting discrimination on grounds of disability in constitutional provisions and in specific anti-discrimination laws or legal provisions; and taking all appropriate measures, including legislation, to modify customs and practices that constitute discrimination against persons with disabilities;**
  - (ii) **Recognizing the impact of multiple discrimination, in particular, discrimination experienced by girls with disabilities;**
  - (iii) **Introducing effective remedies in case of violations of the rights of children with disabilities, which are easily accessible to children with disabilities and their parents and/or others caring for the child;**
  - (iv) **Awareness-raising and educational campaigns targeting the public at large and specific groups of professionals, with a view to preventing and eliminating discrimination against children with disabilities;**
  - (v) **Incorporating principles of human rights, including non-discrimination, in the pre- and in-service training of all professionals working with and for children with disabilities;**
- (c) **Promote strategies to achieve an inclusive education for children with disabilities at all levels, including early childhood education, that include:**
  - (i) **Explicit recognition of inclusive education in legislation and rejection of segregation, and introducing legislation establishing the right to inclusive education for every child on the basis of equality of opportunity and embodying a clear definition of inclusion, the specific objectives it is seeking to achieve, and concrete strategies for its attainment;**
  - (ii) **Incorporating responsibility for the education of children with disabilities within ministries of education;**
  - (iii) **Introducing systems of financing that provide incentives towards a unified system of education and encourage investment in approaches in education that strengthen capacity and commitment among schools;**
  - (iv) **Recognizing that reasonable accommodations to support inclusion need to be based on human rights standards rather than solely on the efficient use of resources;**

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- (v) **Ensuring provision of individualized support plans, and respecting the rights of blind, deaf and deaf-blind children to education in the most appropriate languages and modes and means of communication;**
  - (vi) **Developing a policy framework for inclusive education at the central level to support the practice and culture of inclusion across all levels of the education system;**
  - (vii) **Providing training and support for teachers to enable them to work in inclusive environments;**
  - (d) **Address inequality in access to health care, through measures that include:**
    - (i) **Introducing comprehensive measures to overcome all discriminatory barriers, including educating children with disabilities, their families and patients and health workers on the rights of children with disabilities as patients, and the right to health, and establishing patient charters and complaints procedures;**
    - (ii) **Prioritizing efforts to reach children with disabilities, and promoting inclusive and accessible health services, including sexual and reproductive health services for adolescents, in order to allow them realize their right to health on an equal basis with others;**
    - (iii) **Developing comprehensive early assessment and identification systems;**
    - (iv) **Introducing legislation and policies to enable children and adolescents with disabilities to be involved in their own health care, consistent with respect for their evolving capacities;**
  - (e) **Adopt mechanisms to address the disproportionate vulnerability of children with disabilities to poverty, that include:**
    - (i) **Ensuring that social protection programmes and policies are non-discriminatory, accessible and inclusive for persons with disabilities, including children with disabilities and their families;**
    - (ii) **Adopting measures to remove all direct and indirect discrimination in the provision of social services, including in health insurance, and the conditionalities associated with policies relating to cash transfers;**
    - (iii) **Strengthening social protection measures to reflect the additional costs associated with disability and provide adequate support for families with a child with a disability;**
  - (f) **Implement measures to address violence against children with disabilities, that include:**
    - (i) **Strengthening the capacities of child protection systems and services to be inclusive of children with disabilities and to respond to their needs, as well as to introduce disability-appropriate violence prevention initiatives;**
    - (ii) **Introducing, for children with disabilities in all settings, disability-sensitive legislation that ensures the prevention and identification of, and**

**their protection from, violence, including effective sanctions against abusers;**

**(iii) Introducing accessible, safe and child-sensitive measures to report violence and to facilitate effective access to the judicial system for children with disabilities;**

**(iv) Providing appropriate treatment for and rehabilitation of children with disabilities who have experienced violence;**

**(v) Taking action to reduce bullying and abuse in schools;**

**(vi) Taking action to prevent trafficking and maiming for begging;**

**(g) Establish a process for bringing an end to the over-use of large residential care facilities for children with disabilities, including through:**

**(i) Recognizing in legislation that in no case may disability be used to justify the deprivation of liberty;**

**(ii) Introducing a time-bound commitment towards ending the placement of children with disabilities in large residential care facilities, including the transfer of the resources to community-based care and ending the over-use of such facilities; and ending the practice of unnecessary separation of children with disabilities from their families and subsequent placement in residential care, by providing adequate support to families to care for their children;**

**(iii) Investing in recruiting, training and supporting foster families, and establishing small group homes where children can be cared for and participate fully within the local community when their own families are unable to care for them;**

**(iv) Introducing legislation to provide appropriate protection for the rights of children living in any alternative care arrangement, consistent with the Guidelines on Alternative Care of Children, and including a regulatory framework addressing national standards on disciplinary measures and behaviour management, safety, health, staffing, regular review and independent monitoring, and respect for the right of children placed in alternative care to periodic review of their treatment;**

**(h) Promote policies to ensure that children can fully participate in family life and be cared for by their families, that include:**

**(i) Developing comprehensive early assessment and identification systems as appropriate;**

**(ii) Increasing awareness and knowledge of parents and families about the rights and needs of children with disabilities;**

**(iii) Developing comprehensive community-based services to provide support for parents of children with disabilities, developed in collaboration with families and children with disabilities themselves, in order to ensure access to support services, such as home adaptations, including assistive devices, support and care for family members or other unpaid caregivers, counselling or sign language teaching;**

**(i) Adopt measures to enhance protection of children with disabilities in situations of risk and humanitarian emergencies, that include:**

**(i) Accounting for the needs of children with disabilities in disaster risk reduction and disaster preparedness strategies before, during and after disasters, to ensure comprehensive responses, including prevention, rehabilitation and inclusion;**

**(ii) Encouraging and enabling children affected by disasters and emergencies, in particular adolescents, to participate in analysing their situations and future prospects in crisis, post-crisis and transition processes, while ensuring that such participation is in accordance with their age, maturity and evolving capacities and is consistent with the best interests of the child;**

**(iii) Ensuring that appropriate care is taken to protect children from exposure to situations that are likely to be traumatic or harmful; and ensuring the protection and safety of children with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and natural disasters.**

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