

Review of the Concluding Observations made
by the Committee on the Rights of the Child :

Non-Discrimination, Disability and Ethnic Rights



Save the Children

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by the Committee on the Rights of the Child :

***Non-Discrimination Disability
and
Ethnic Rights***

Save the Children fights for children's rights.
We deliver immediate and lasting improvements to children's lives worldwide.

Save the Children works for:

- a world which respects and values each child
- a world which listens to children and learns
- a world where all children have hope and opportunity

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Summary

This review paper was undertaken in the light of growing work within the Save the Children Alliance on child rights programming in line with a rights-based approach. Overcoming discrimination has been a core principle of the larger discourse regarding human rights and therefore has been addressed in the International Human Rights Bill (UDHR, ICCPR and ICESCR). Other important treaties such as CERD, CEDAW, UNCRC, CAT and CRPD have also addressed the continuing discrimination that certain groups face in daily life. Equity and non-discrimination are fundamental principles for respecting, fulfilling and protecting the rights of children. Nevertheless, discrimination and exclusion remain rampant and constant hindrances to people seeking to access their rights.

Despite the measures taken at international and national levels to develop and implement policies and legislation, discrimination is widespread and affects children's everyday lives. Discrimination results from the unequal power dynamics and structures in society. Addressing discrimination requires a holistic strategic approach at multiple levels. Although Save the Children has been working on discrimination in an ad hoc manner, it has not addressed the principle of non-discrimination strategically and holistically. This paper intends to initiate a discussion within the Save the Children Alliance and other child rights organisations to develop a strategic framework for working with non-discrimination and hopes to:

- highlight issues that need to be addressed when working with/on non-discrimination
- contribute towards developing a strategic framework on the principle of non-discrimination and
- contribute towards developing a concept note/proposal to request the CRC Committee to deliberate and initiate a general comment on non-discrimination.

This review has been developed primarily by analysing the concluding observations made by the UNCRC Committee to the South Asian countries regarding Article 2 (non-discrimination), Article 23 (disability) and Article 30 (ethnic minorities).

The observations regarding Article 2 fall broadly under the categories of legislation and policy, removing disparities, monitoring body, budgetary allocations, technical assistance, awareness campaigns, research and quality education.

Observations regarding Article 23 provide suggestions on legislation and policy, research and data collection, physical environment, education, awareness campaigns, rehabilitation, citizenship, resource allocations and capacity building and technical assistance. As for Article 30, the observations address issues of laws and legislation, data collection, capacity building and awareness campaigns.

The South Asian countries are inhabited by multiple ethnic and religious communities and many are considered as 'developing countries' with extreme poverty, limited financial and human resources and undergoing civil conflict (Afghanistan, Bhutan, India, Nepal, Pakistan and Sri Lanka).

Over the years, the Committee's recommendations have become more detailed and specific. The Committee has also referred to other relevant conventions, bringing in the need of all duty bearers to mainstream child rights throughout the different

UN treaties. The Committee's recommendations under all the articles take into account the cross-cutting nature of the principle of non-discrimination. Recommendations to counter discrimination are thorough and provide a multi-pronged approach.

The significance and relevance of the Committee's recommendations regarding Articles 2, 23 and 30 are discussed. Finally, suggestions have been incorporated on developing holistic, multi-pronged strategies to counter discrimination and promote inclusion. These are solely intended for the Save the Children Alliance and other child rights organisations to consider when working on the principle of non-discrimination. Emerging questions must be debated within the Save the Children Alliance.

Acknowledgements

It has been a great pleasure for us to have analysed the concluding observations made by the UNCRC Committee to South Asian governments. It has been interesting and a learning process for us to link between what is happening at the ground level to the observations and recommendations made by the Committee.

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Thanks to all of you for your active contributions, reflections, sharing and feedback, which have shaped and enriched this review.

We trust this document will serve as a useful analytical tool for recommendations and wider use within Save the Children Sweden and beyond in the wider Save the Children family.

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Abbreviations and Acronyms

AIDS	Acquired Immuno-Deficiency Syndrome
CAT	Convention Against Torture
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CERD	Convention on the Elimination of all forms of Racial Discrimination
CRPD	Convention on the Rights of People with Disabilities
CWD	Children with Disabilities
CRP	Child Rights Programming
HIV	Human Immuno-Deficiency Virus
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IDP	Internally Displaced People
NGO	Non-Governmental Organisation
UN	United Nations
UNCRC	United Nations Convention on the Rights of the Child
UDHR	Universal Declaration of Human Rights
UNICEF	United Nations Children's Fund
WHO	World Health Organisation

I. Introduction

I, too, have suffered from discrimination. I am 17 years old. We are poor. We work for the rich Naidus and Brahmins (upper castes) in their fields, sowing the saplings, taking out weeds and harvesting. They poured porridge in our hands and we would take that. When we called Brahmins during the time of harvest, they would not touch or speak to us. At school, children of other castes would speak ill of us. If we went outside to work, they asked us what caste we were. When we said that we were Pariahs (a lower caste) and asked for water, they asked us to drink water kept in a jar separately and refused to give it with their own hands. (A girl in Tamil Nadu, India)¹

Children in almost all societies lack power in family and societal structures, they are more vulnerable to discrimination than adults. In most parts of the world, adults commonly feel that children do not have their own understanding and need to be shaped for the future. When discrimination is analysed systematically, it becomes apparent that many children face discrimination at multiple levels and from multiple institutions. Children face discrimination not only due to their age but also their gender, race, colour, caste, language, religion, disability or cultural traditions.

Rationale of the paper

Non-discrimination is one of the four general principles of the United Nations Convention on the Rights of the Child (UNCRC) and a cross-cutting theme that should be addressed in all of the convention's 41 articles in a strategic framework. To date, much of the work on non-discrimination has been ad hoc and a shift towards employing more holistic approach needs to be adopted when working on non-discrimination.

This paper hopes to contribute towards developing a holistic strategic framework on working with non-discrimination by bringing like-minded professionals on the same platform to brainstorm and debate on working with the principle of non-discrimination by contributing and holding meetings at different levels. It is hoped that during these meetings, strategies will be developed to coherently address interventions at multiple levels so that work undertaken on behalf of children from marginalised groups will have maximum impact.

Hence this review has been initiated in the hope that it will:

- highlight issues to be addressed when working with/on non-discrimination,
- contribute towards developing a strategic framework on the principle of non-discrimination,
- contribute towards developing a concept note/proposal to request the UNCRC Committee to deliberate and provide a general comment on non-discrimination.

To start, it was necessary to determine what the committee on the UNCRC had said regarding how to address and implement the principle of non-discrimination. Therefore we examined the UNCRC Committee's concluding observations on a selected number of articles, even though the principle of non-discrimination is a cross-cutting issue.

1. Save the Children, 2004, *Seven Windows of India*, Documentary, in Shrestha et al., 2006, *Discussion Paper: Demystifying Non-Discrimination for Effective Child Rights Programming in South and Central Asia*, Save the Children Sweden: Kathmandu, p. 38.

Methodology

An analytical desk review of the UNCRC Committee's concluding observations to countries in South Asia was conducted². Save the Children wanted to determine to what extent and scope the Committee was considering the principle of non-discrimination when examining the State Party Reports.

Due to lack of time and other constraints, this paper's analysis is limited to:

- Article 2 – Principle of Non-Discrimination
- Article 23- Rights of Children with Disability
- Article 30- Rights of Children of Ethnic Minorities and Indigenous Groups.

Article 23 (disability) and 30 (ethnic minority) were chosen on the basis that when discussing 'non-discrimination' or inclusion, we do so with particular reference to children with disability and children from ethnic and or indigenous groups (inclusive of language and cultural settings). Hence this is not a holistic overview of non-discrimination, but rather an input that may start discussion on non-discrimination in a broader sense and help to develop a more comprehensive strategy and conceptual framework for our work.

Audience

This paper is primarily aimed at 'non-discrimination' or 'diversity' officers of Save the Children Alliance members.

Examination of Concluding Observations

This paper is only part of the process of developing comprehensive strategies on working against non-discrimination. Hence, it only attempts to examine the concluding observations issued by the Committee to the South Asian region³.

Since the Committee to the UNCRC only provided its observations to countries that have ratified the Convention and submitted state reports⁴, only seven countries are presented here: Bangladesh, Bhutan, India, Pakistan, Maldives, Nepal and Sri Lanka.

Conventions' Binding Nature

Once ratified, conventions are legally binding. When governments ratify a convention, they agree to be held accountable under the principles of the convention and to incorporate the convention's provisions into the domestic legal system. How they are incorporated into the legal system differs from country to country.

In some countries, a convention will be discussed in parliament and its provisions included either by amending a particular act or legislation, or by introducing a new law. In other countries, as soon as a convention is ratified, it comes into affect as law and can be used as a tool in court if the standards are higher than the country's existing laws. In Nepal, for example, the Treaty Act Law, 1990, states that any international convention with standards higher than national law will take precedence.

2. Except for Afghanistan all the countries have been covered (Afghanistan has not submitted a single report to CRC to date).

3. Though this paper provides a South Asian perspective, it has assumed that issues highlighted by the Committee would to greater or lesser degrees also apply to other countries, though the groups and levels of discrimination might differ. But the negative impacts of discrimination would have a similar impact on children's overall development.

4. See the preceding chapter on the ratification and reporting profile of South Asian countries.

Legal Status of Concluding Observations

The UNCRC provides for a committee of experts, selected by countries which have ratified the convention, to provide feedback. The committee is composed of experts and chosen in their individual capacities.

Though the concluding observations are not legally binding, they do have some weight since they are provided by a group of experts under a convention, which in turn has legal status. Its observations are in the form of suggestions and recommendations by experts on child rights to the concerned state parties regarding how they should further implement their obligations in ensuring and promoting child rights.

These concluding observations are powerful because they can be critical of state parties. Once these observations are disseminated to the international arena and to the general public, they can help to hold governments accountable to the civil society and to mobilise international pressure into shaming the governments to take action, where they may be unwilling to.



2. Reporting Profile

All the countries in South Asia have ratified not only the United Nations Convention on the Rights of the Child, but also other major international human rights treaties (see Annex 1). This signifies that the governments agree on children’s rights and are willing to be legally bound by international human rights standards and hence to implement those principles in their respective countries. Except for Afghanistan, all South Asian countries have fulfilled their obligations to report to the Committee. Furthermore, they have provided their second periodic report to the Committee. This paper is based on the concluding observations provided by the Committee to the states on their initial and periodic reports. It tries to highlight several things:

- what the recommendations are,
- whether the recommendations have changed or become more specific with time, reflected in the review of periodic reports and
- how extensive/holistic the recommendations are.

2.1 Initial Reporting and Periodic Reporting

Article 44.1 (a) of the UNCRC gives basic guidelines to the states on reporting to the Committee on the Rights of the Child. It states⁵

States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights;

(a) *Within two years of the entry into force of the Convention for the State Party concerned;*

(b) *Thereafter every five years;*

	Initial Reporting	Periodic Reporting	Next Report Due
Afghanistan	Not reported to date		
Bangladesh	Submitted 7 Dec 1995	Submitted 14 Mar 2003	3 rd & 4 th report '07
Bhutan	Submitted 14 Oct 1999	Delay / Not Submitted	Delay / Not Submitted
India	Submitted 7 July 1997	Submitted: 16 July 2003	3 rd & 4 th report '08
Maldives	Submitted 5 Aug 1996	Submitted 10 Apr, 2006	2 nd & 3 rd report '06
Nepal	Submitted 10 May 1995	Submitted: 3 Dec 2004	3 rd , 4 th & 5 th combined '10
Pakistan	Submitted 28 May 1993	Submitted: 11 Apr 2003	3 rd & 4 th combined '07
Sri Lanka	Submitted: 5 May 1994	Submitted: 19 Nov 2002	3 rd & 4 th combined '08

The data in the table clearly show that reporting guidelines have not been followed properly by the governments; all the countries have submitted their initial and second reports late, while Afghanistan has not submitted even a single report to date. This could be because most countries in South Asia do not take children’s rights seriously, are short on technical and other resources or do not have independent reporting mechanisms such as child ombudsperson⁶ or a child rights desk.

5. UNCRC Article 44, paragraph 1. <http://www.ohchr.org/english/law/pdf/crc.pdf>
 6. Bangladesh is in the process of setting up an ombudsperson for children.

...the Committee recommends that the State Party expedite, as much as possible, the establishment of an independent national commission for children in accordance with the Paris Principles relating to the status of national institutions....and on national human rights institutions, to monitor and evaluate progress in the implementation of the Convention at the federal and at the state level.
- Para 18, Concluding Observations of the CRC Committee, India, February 2004

The Committee, aware of the delay in the State party's reporting, wishes to underline the importance of a reporting practice that is in full compliance with the provisions of article 44 of the Convention. Children have the right that the committee in charge of regularly examining the progress made in the implementation of their rights, does have the opportunity to do so. In this regard, regular and timely reporting by States parties is crucial.

As an exceptional measure, in order to help the State party catch up with its reporting obligations so as to be in full compliance with the Convention, the Committee invites the State party to submit its third and fourth periodic reports in one consolidated report by 1 September 2007, the date on which the fourth report is due. The consolidated report should not exceed 120 pages (see CRC/C/118). The Committee expects the State party to report thereafter every five years, as foreseen by the Convention -- Paragraph 82, Concluding Observations of the CRC Committee, Bangladesh, October 2003



There is also a strong link between government reporting and the role or presence of civil society organisations in the countries⁷. Where civil society has strongly advocated for children's rights, governments have taken proactive measures. Even though the governments might be late in reporting to the UNCRC Committee, they have submitted both initial and periodic reports. On the other hand, they have also tried to promote children's rights through legislation reforms or introduction⁸. Though the actual implementation might not be as effective, the recognition is there.

7. For a list of NGOs that have been involved in producing shadow/alternative reports, please see Annex 3.

8. For a review of some of the legislations in place in South Asia, please refer to Annex 4. Some of these legislations have been introduced as a direct result of the recommendations made by the UNCRC Committee.

3. Concluding Observations by the Committee on the Rights of the Child

Many children in South Asia face discrimination in their day-to-day lives, including gender, belonging to lower castes, belonging to tribal or indigenous groups, disabilities, HIV/AIDS, being born out of wedlock, belonging to ethnic minorities, living in rural or remote areas and being affected by armed conflicts. Most of these children face discrimination at multiple levels: for example, a disabled girl belonging to a lower caste living in a rural area. These discriminations manifest in the denial and lack of access to basic services like education, health, water and sanitation, public places (religious places, wells). These discriminations also encompass heinous crimes against children like female foeticide, female infanticide, early/child marriages, practices of untouchability, honour killing of girls and many others.

Due to discriminations at multiple levels, children become more vulnerable and are exploited into trafficking, labour in hazardous jobs, sexual abuse and prostitution. The most common effects of discriminations persistent in South Asia are high dropout rates of girls from schools, child labour and exclusion of disabled children from education systems and society at large.

3.1 Article 2: Non-Discrimination

Taking these factors that emerged in the concluding observations of the Committee on the Rights of the Child into account, the provisions to protect, promote and ensure children's rights given under the UNCRC become very significant. Provisions and articles given under the UNCRC are implemented by the state at multiple levels by making and implementing laws, policies, programmes, special measures⁹ and legislation to protect children's rights and to promote non-discrimination.

Article 2 of the UNCRC defines discrimination and outlines the obligations of states to ensure that no children are discriminated against.

1. *States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.*
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 members¹⁰*

The following list summarises the key recommendations under Article 2, made by the Committee on the Rights of the Child to the governments of Bangladesh, Bhutan, India, Pakistan, Sri Lanka, Maldives and Nepal.

The Committee recommends that governments- Legislation and Policies:

- a) Undertake legal reforms by reviewing and amending national legislation and

9. These refer to measures such as appointing ombudspersons for children, creating constitutional bodies with mandates of protecting human rights and children's rights, and so forth.

10. Article 2, UNCRC.

policies in accordance with the general principle of non-discrimination to bring compatibility between national legislation and the Convention on the Rights of the Child: *Bangladesh, India, Nepal, Maldives and Sri Lanka*.

- b) Fully implement laws, legislation, policies, national plans of action and other measures taken to implement the principle of non-discrimination as provided under Article 2 of the UNCRC, to ensure that all children within a state's jurisdiction enjoy all rights without discrimination and to protect children belonging to most vulnerable groups: *India, Nepal and Pakistan*.
- c) Laws implementing the principles of the Convention on the Rights of the Child should be applicable to children living in all parts of the country¹¹: *Pakistan (the laws do not apply to children living in Northern Tribal Territories)*

Removing Disparities

- d) Remove disparities in the level of accessibility and enjoyment of the UNCRC among children living in different geographical locales: *India and Maldives*
- e) Remove disparities in the level of access and enjoyment of rights and basic services among children belonging to disadvantaged castes and groups (Dalits, Schedule Castes and tribes, etc)¹² *India and Nepal*
- f) Apply the principle of non-discrimination in all political, judicial and administrative decisions as well as programmes, services and reconstruction activities which have an impact on children: *Sri Lanka*
- g) Undertake special temporary programmes and strengthen existing programmes by setting specified goals and timetables to evaluate and monitor their success: *Bangladesh, India and Nepal*.
- h) Undertake targeted social services towards children belonging to vulnerable groups: *Bhutan and Pakistan*.

Monitoring Body

- i) Introduce and establish effective mechanisms or independent monitoring systems (ombudsperson or human rights commission) to receive, monitor and address complaints of discrimination: *Bhutan¹³ and Nepal*

Budgetary Allocations

- j) Increase budgetary allocations for programmes targeting the most vulnerable groups: *India*.

Technical Assistance

- k) Take technical assistance from UNICEF and other NGOs to implement Article 2 and to build capacity of state actors on UNCRC: *India and Nepal*.

Awareness Campaigns

- l) Undertake comprehensive public awareness/education campaigns and/or strengthen existing campaigns/measures to sensitise family; community, religious and political leaders; government officials; and other stakeholders on children's rights. These should also address existing discriminations in society to change prevalent discriminatory attitudes to prevent and eliminate de facto discrimination against children (especially of children belonging to vulnerable groups): *Bangladesh, Bhutan, India and Nepal*.

11. The laws should be applied equally in all parts of the country and no exception should be taken when tribal or personal laws conflict with the UNCRC.

12. Recommended by the Committee in line with CERD Concluding Observations referring to children belonging to low castes, especially Dalits.

13. Committee highlighted the persistence of discrimination against children of Lhotshampas (*southerners* in , the national language of), and refers to the settlers who reside primarily in the southwest of the country. The Lhotshampa populations mainly came from prior to 1958 (en.wikipedia.org/wiki/Lhotshampa as viewed on 10 April, 1997).

Research

- m) Undertake gender impact studies while planning programmes relating to economic and social policies: *India*

Quality Education

- n) Provide specific information in the next periodic report on the measures and programmes relevant to the Convention undertaken by the state to follow up on the Durban Declaration and Programme of Action adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking account of the Committee's General Comment No. 1, Article 29 (para. 1) of the Convention (aims of education): *Bangladesh, India, Nepal, Pakistan and Sri Lanka*.

Concluding Points

The Committee has asked five countries to provide specific information on implementation of their Programme of Action¹⁴ taking into account its General Comment No. 1 on Article 29 (para. 1). The demand for this information highlights the need to link and work with commitments made at different levels by respective governments. Further, it reflects that the Committee is not only providing its recommendations based on information it receives from states and civil society, but that the gathering of information and implementation of principle of non-discrimination are also based on other related instruments (conventions, comments, resolutions, etc). This strengthens and reinforces that children's rights are part and parcel of the human rights discourse and international human rights law, with the underlying principle of non-discrimination running through it. It also highlights the increasing focus and knowledge of the Committee on Non-Discrimination as it gains information from other sources and as it works on these principles and how to address issues of non-discrimination. This is crucial towards mainstreaming children's rights in the human rights discourse as well as addressing the problem of discrimination at multiple levels and forums.

Example of Information requested: Linking General Comment 1 (on Aims of Education) & Programme of Action (Racism)¹⁵

Article 29 (para 1a-e) of UNCRC clearly defines the different aims of education (quality and inclusive education with respect for all) that state parties need to fulfil while providing education to children. Programme of Action (para 117) of General Comment 1 (para 4 & 11) on Article 29 (1) urges the state parties to promote anti-racism education by promoting the values of acceptance, tolerance, diversity and respect for the cultures of indigenous people and ethnic minorities. State parties should provide education which promotes respect among all children for minority/indigenous/ethnic cultures, identity, history, language, values and human rights of all people. State parties need to implement the right of ethnic minorities, indigenous children and other linguistic minorities to be provided education in their native language besides the national language. Programme of Action paragraphs 121 to 124 urges state parties to provide education based on human rights, diversity and tolerance to all children regardless of age, sex, caste, creed, ethnicity, religion, colour, race or any other discriminatory difference. Paragraph 10 of GC 1 notes that educational material can be gender biased and that formal education systems often are not inclusive towards disabled children and children suffering from HIV/AIDS.

14. Programme of Action was adopted in World Conference against Racism, Racial discrimination, Xenophobia and Other Related Intolerance held in Durban, South Africa, from 31st Aug to 8th Sept 2001.

15. Refer to footnote 12.

The Committee also highlighted discrimination against children belonging to low castes in India and Nepal from CERD. In providing recommendations to these countries, the Committee gives recommendations in line with CERD. This makes the recommendations to these countries stronger and more legally binding.

It is interesting to note that there were no recommendations made regarding positive discrimination (affirmative action). The Committee also did not request disaggregated data collection on the different groups, but this is likely due to the principle of non-discrimination being a guiding principle which should impact all the other substantive articles of the UNCRC. Disaggregated data have been requested on the substantive articles.

3.2 Article 23: Rights of Children with Disabilities

When I come out of my house, the people point at me and say, 'why don't you stay in, look at you! You cannot walk properly!' But my problem is not my disability. It is the attitude of people who make fun of me. (A boy in Lahore, Pakistan)¹⁶

Children with disabilities have been and are being discriminated against all over the world. They are denied access to education; to adequate medical and health services; to participation in family and community life and to play or recreational activities, to name a few. They are socially excluded from society and therefore become more vulnerable to sexual abuse, beggary, trafficking and labour. Furthermore, many of these children are put in institutions by their caregivers, depriving them of the right to family and social life.

Governments in South Asia have not been effective in working towards eliminating discriminations against children with disabilities. One key indicator is the education systems, which are not disabled friendly or truly inclusive, despite policies indicating the contrary. Another indicator is the lack of reasonable funding to implement special education and other programmes based on inclusion in society at large. Further, some of the national laws are discriminatory towards children with disabilities. For example, in Nepal children with mental disability are allowed to be put in jail and chained.¹⁷

Article 23 of the UNCRC states:

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 or his or 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, healthcare 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 his or her cultural and spiritual development.*

16. Save the Children, 2004, *Seven Windows of India*, Documentary, in Shrestha et al., 2006, *Discussion Paper: Demystifying Non-Discrimination for Effective Child Rights Programming in South and Central Asia*, Save the Children Sweden: Kathmandu, p. 40.

17. Paragraph 38, Concluding Observations: Initial Report of Nepal, UNCRC Committee, 1996.

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive healthcare 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 regard, particular account shall be taken of the needs of developing countries.

The following list summarises key recommendations made by the UNCRC Committee on Article 23 to governments of South Asia¹⁸.

The Committee recommends that governments-

Legislation and Policies:

- a) Establish a comprehensive policy for children with disabilities and ensure full implementation of existing policies and programmes to remove discrimination against children with disabilities and to facilitate inclusion: *India, Bangladesh, Nepal*.
- b) Review all policies in accordance with the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (GA Res 48/96) and recommendation from the General Discussion day of the Committee on the Rights of the child on children with disabilities (CRC/C/69): *Bhutan*.
- c) Involve children with disabilities and their families in review and development of policies affecting them: *Bhutan*.



18. Recommendations have been made in accordance with the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96) and of the Committee's recommendations adopted on its Day of General Discussion on Children with Disabilities (CRC/C/69).

Research and Data Collection

- d) Assess the situation of children with disabilities in terms of their access to basic services and take measures to provide appropriate care and necessary services (education, health, water, etc.) to children with disabilities, especially for girls and those living in rural areas: *Bangladesh, India, Nepal, Sri Lanka*.
- e) Establish mechanisms to collect adequate and disaggregated statistical data on children with disabilities and use such data in developing policies and programmes to prevent disabilities and to assist disabled children: *India*
- f) Undertake research to study the causes, extent and ways of prevention of disability among children. Establish early detection, referral and intervention programmes to prevent and remedy disabilities: *Bangladesh, India, Nepal, Bhutan, Maldives*.

Physical Environment

- g) Ensure the physical environments of schools, sports and leisure facilities and other public areas disable friendly and accessible: *Nepal, Pakistan*.

Education

- h) Consideration should be given in establishing special education programmes and integration towards the regular school educational system, including non-formal education programmes in rural areas for children with disabilities. This should be done with the aim of overall inclusion in society and community life: *Bangladesh, India, Nepal, Pakistan, Sri Lanka, Bhutan, Maldives*.

Awareness Campaigns

- i) Undertake public awareness campaigns, especially for parents, focusing on prevention, inclusive education, family care, rights and special needs of children with disabilities, including those with mental health concerns: *Bangladesh, India, Pakistan, Maldives*.

Rehabilitation

- j) Increase the capacity of institutions to rehabilitate children with disabilities: *India (2000)*.
- k) Increase community-based rehabilitation programmes (parent support groups): *Bhutan (2001)*.
- l) Expand and implement alternative measures to institutionalisation of children with disabilities: *Maldives (1998)*.
- m) Register and monitor all special schools run by non-state actors: *Sri Lanka*.

Citizenship

- n) Ensure that children are registered at birth: *Bangladesh*.

Resource Allocation

- o) Allocate resources, both financial and human, to implement and develop special education programmes, including vocational training and the support given to families of children with disabilities: *India, Nepal, Bhutan*.

Capacity Building and Technical Assistance

- p) Training and capacity building of all professionals working with children with disability, including mainstream teachers about special needs: *Bangladesh, India, Nepal, Sri Lanka, Maldives.*
- q) Take technical assistance for training of professionals from WHO and others: *Bangladesh, India, Nepal, Bhutan (UNICEF also), Maldives (UNICEF also).*

Concluding Points

The recommendations for South Asia as a whole appear to be quite comprehensive. The Committee stresses the need for access to services for children with disabilities. It highlights the need to focus on rural areas where services of any kind might be non-existent or extremely difficult to access.

It further highlights there is lack of reliable information on the early detection and prevention of disabilities, and often superstition is used to justify the causes for disability. Recognising the lack of access to physical and mental health services is an important step in re-casting this issue as a health issue, rather than something befalling individuals due to superstitions or omens, which can often lead to hiding or even killing children with disabilities. Most countries lack programmes regarding early detection and prevention of disability.

There is also an emphasis on the government's responsibility to assist and support families and caregivers of children with disabilities. It brings up the need to develop a comprehensive mechanism to undertake situation analysis of children with disabilities, keeping in mind that the data need to be desegregated.

The Committee highlights that legislations, policies and programmes may not always be implemented fully due to lack of adequate funds and that policies targeting children with disabilities may not be comprehensive. This leads to exclusion from basic services such as education, participation in community life and in society at large. Furthermore, there are instances of well-intentioned policies that might actually be discriminatory because they are not 'rights' based, but rather 'protection' or 'charity' based. For example, in Nepal mentally disabled children can be put in jail and chained (1996 Concluding Observations).

However, the discrimination faced by children with disabilities has not been comprehensively addressed, as discrimination due to poverty, gender, armed conflict and ethnicity has not been examined in the context of disability.

It also seems odd that there are no recommendations made regarding affirmative actions to improve the situation of children with disabilities.

3.3 Article 30: Rights of Children Belonging to Ethnic Minorities and Indigenous Groups

I stopped going to the government school because when I spoke to my friends in Urdu they punished me. (An Urdu-speaking child, Andhra Pradesh, India)¹⁹

Children belonging to indigenous groups and ethnic minorities are extremely vulnerable to discrimination due to their background. Most of these children have limited access to basic social services. There are high rates of infant mortality and disease due to lack of appropriate medical services provided by governments to indigenous groups.

19. Save the Children, 2004, *Seven Windows of India*, Documentary, in Shrestha et al., 2006, *Discussion Paper: Demystifying Non-Discrimination for Effective Child Rights Programming in South and Central Asia*, Save the Children Sweden: Kathmandu, p. 49.

Most countries in South Asia are pursuing heavy industrialisation and economic development to achieve economic growth. Many of these development activities are undertaken in places inhabited by indigenous groups, leading to mass displacement. Due to displacement these children and their families shift to cities for their livelihoods, which makes these children more vulnerable to exploitation in the worst forms of child labour, child prostitution and other exploitations.

Furthermore, key persons, such as teachers and other professionals working with children belonging to indigenous groups, are not culturally trained. Many of the materials used are not relevant in the context of minorities or their needs are not taken care of, leading to their exclusion from society at large. It can be concluded that children belonging to indigenous groups face extreme marginalisation, exploitation and violation of their basic rights.

Particular reference has been given to children of Lhotshampas (Bhutan) and children from tribal groups living in Chittagong Hill Tracts (Bangladesh); the former have been mentioned under Article 2 and the latter under Article 30.

Article 30 of the UNCRC states:

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 his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.

Recommendations on Article 30 in South Asia have been given to Bangladesh and India only, but have been referred to under Article 2. Bangladesh and India have been broadly recommended to follow recommendations made by the Committee on General Discussion on the Rights of Indigenous Children (CRC/C/133). Some of the important recommendations have been given below; for detailed recommendations on the rights of indigenous children²⁰, refer to Annex 2.

The Committee recommends that governments -

Laws and Legislation

- a) Provide specific information on laws, policies and programmes initiated for implementation of rights of indigenous children: *Bangladesh and India.*

Data Collection

- b) Collect information on all minorities and marginalised groups. Provide comprehensive information on the situation of children belonging to these groups: *Bangladesh.*
- c) Improve disaggregated data collection on the situation of indigenous children and use it in developing legislations, policies and programmes to improve their situation: *Bangladesh and India.*

Capacity Building and Awareness Campaigns

- d) Train and educate professionals working with indigenous children: *Bangladesh and India.*
- e) Undertake and develop public awareness campaigns with full participation of indigenous children to combat negative social attitudes: *Bangladesh and India.*

20. In addition to this India has been asked to follow recommendations made by the Standing Committee on Labour and Welfare on the Development of Primitive Tribal Groups in 2002.

Concluding Points

Many of the recommendations for Article 30 have been addressed under Article 2²¹. At the same time, it is also interesting to note that recommendations for Article 30 have been given to only two of the seven countries reporting to the committee.

In South Asia almost all the countries are inhabited by ethnic minorities. There is armed civil conflict in parts of Sri Lanka, India, Nepal and Pakistan involving ethnic minorities, and various independent human rights organisations and UN bodies have noted the persistent violence and discrimination against ethnic minorities and tribes in Bhutan. Therefore the lack of direct recommendations on the situation of ethnic minorities in the other five countries of South Asia is curious.

Perhaps the Committee feels that these issues have been identified to the Committee on CERD, but providing recommendations under CRC would give the recommendations more strength and make the link between the two conventions stronger. Even if this were true, why has the Committee provided recommendations only to Bangladesh and India.

Furthermore, the issues highlighted or recommended have been vague and do not reflect specific information on the type of discriminations persisting. Is this due to the lack of information provided by the state parties? Have civil societies not been highlighting these issues to the Committee? Or are the civil society groups providing information to the Committee only regarding elite groups in their countries and therefore not voicing the concerns of minority groups?. Or perhaps the issues are so sensitive at their current state, that the Committee feels it better not to take a stand at the current moment.

21. The Committee has asked for specific information related to education and follow up on Durban Declaration and Programme of Action from almost all the countries in South Asia.

4. Impact of the CRC Concluding Observations

The impact of the concluding observations provided by the Committee on the Rights of the Child needs to be studied at depth, but what can be surmised is that there has been moderate impact at national and international levels.

Many of the state parties have taken proactive measures in developing or amending their legislations in line with the UNCRC principles²². Some have legislation that specifically targets children's rights as a whole (Maldives, Nepal and Sri Lanka). Many have also developed national plans of action for children (Bangladesh, India, Maldives, Nepal and Pakistan). Some have a 'child rights' desk in their National Human Rights Commission (Nepal and Sri Lanka).

Many of the countries have developed specific legislation on specific rights violations such as: violence against the girl child (Bangladesh and India); untouchability (India and Nepal); disabilities (India and Nepal); exploitation (India, Nepal and Pakistan) and juvenile justice (Pakistan)²³.

The concluding observations have also played a key role in the development of General Comments. For example, in 2006, the CRC Committee produced a General Comment on children with disabilities, setting out detailed recommendations on how the rights of children with disabilities should be respected. This has reinforced the need to consider the rights of children with disabilities and has had an impact on the development of the Convention on the Rights of People with Disabilities, which was open for signature in April 2007²⁴.



22. Please see Annex 4 for list of some of the legislation mentioned.
 23. The two paragraphs above have been taken from: B. Shrestha et al., 2006, *Demystifying Non-Discrimination for Effective Child Rights Programming in South and Central Asia*, Save the Children: Kathmandu.
 24. Please see Annex 5 for a list of the rights of children with disabilities addressed by the Convention on the Rights of People with Disabilities.

5. Strengths and Weaknesses of Concluding Observations

Positives

Over the years, the Committee's recommendations have become more detailed and specific²⁵. As the Committee has been working on the rights of children, its understanding, expertise and knowledge on the issues have been expanding and evolving, which has an immense impact on the way civil society and governments work. It also indicates the impact civil society has on the recommendations. It has also been referring to the other relevant conventions, bringing in the need to mainstream children's rights throughout the other treaty-monitoring bodies. For example, recommendations given by the Committee on Elimination on Racial Discrimination have been used in India and Nepal.

The Committee's recommendations take into account the persistence of discrimination at multiple levels and forms. Taking this fact into account, the Committee has made recommendations to counter discrimination through a multi-prong approach, recommending that state parties perform awareness raising campaigns targeting religious leaders, community leaders, government officials, family members and others on gender discrimination. These should be done with the right legislative framework and appropriate resources.

One important highlight has been that the recommendations given under all the articles take into account the cross-cutting nature of the principle of non-discrimination and aim at elimination of all forms of discrimination and towards inclusion.

Weakness

However, there is lack of recommendations given on Article 30 to countries where there is a known problem of ethnic discrimination, for example in Sri Lanka, Bhutan and Nepal. Discrimination against children belonging to the Tamil community in Sri Lanka is well documented and reported in international media. The ongoing civil war in Sri Lanka has affected many children and made them more vulnerable to abuse and violence. Most of the IDPs in Sri Lanka (due to conflict) are women and children from ethnic Tamil minorities living in terrible conditions in IDP camps. Therefore, it would be invaluable if the Committee raised these concerns in its dialogue with the government of Sri Lanka and asked for specific information on the condition of children living in IDP camps.

Many children face discrimination due to persisting chronic poverty. Further, the discrimination faced by girls, children with disabilities and children belonging to indigenous groups living in chronic poverty increases manifold. Although the Committee recommends support for caregivers of children with disabilities, the impact of poverty as cause and consequence of discrimination has not been addressed.

All the countries of South Asia, except Maldives, are affected by armed conflicts. These ongoing conflicts affect children adversely and make them more vulnerable to violence and abuse, a situation that has not been addressed at depth by the Committee. Furthermore, there is no mention of disability caused as a result of armed conflict.

25. These are reflected in the more specific recommendations the Committee has been giving when comparing the initial and periodic reports.

6. Conclusion and Recommendations

This chapter explains the significance and relevance of some of the recommendations given by the Committee on the Rights of the Child in the preceding chapter on Articles 2, 23 and 30.

Laws and Legislation

Article 2 (Non-Discrimination) of the UNCRC requires state parties to ensure that all children within their political boundaries and jurisdiction enjoy all the rights in the convention without discrimination of any kind. This obligates the state parties to take appropriate measures to prevent and remove all forms of discrimination. Therefore, all constitutional provisions undertaken by the state parties to implement UNCRC must take into account the principle of non-discrimination and address existing discrimination. For example, the practice of untouchability in India is banned under Article 17 of the Indian constitution and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

The principle of non-discrimination should always be considered when formulating laws, policies and intervention strategies. Hence, state parties should comprehensively review all domestic laws and related policies/regulations and interventions to ensure that none of the existing national laws or personal religious laws recognised by state institutions are against the principle of non-discrimination. For example, in Sri Lanka the minimum age of marriage for girls is different in three different domestic laws²⁶ recognised constitutionally, namely, Sri Lankan, Kandyan and Muslim (marriageable age of girls is as low as 12 in some of these laws).

Although many laws and national legislations have been made²⁷ by the state parties to ensure implementation of Articles 2, 23 and 30, the Committee observes that these laws have not been fully implemented. The Committee highlights the need to work through a multi-prong approach in eliminating discrimination. It is not only important to have right legislations, but these need to be supported through appropriate resources, capacity, information and public awareness of their rights. These approaches should be supported and cross linked to be successful.

Public Education/Awareness Campaigns

Public education and awareness campaigns are crucial in countering discrimination due to stereotypes and harmful traditional practices. For example, campaigns against HIV/AIDS can help in removing the stereotype that HIV can be spread by touching. This message would help children with HIV or whose parents are affected by HIV to get admitted to school. These campaigns play a vital role in educating and sensitising the public to different forms of discrimination that society does not perceive due to socialisation and patriarchal structures. These campaigns can be specially targeted to a group of people like religious leaders (on girls' education), police and judges (on juvenile justice), community leaders (on caste discrimination) and others.

Government should also sensitise media on non-discrimination, as media play an important role in countering stereotypes. States should ensure that media and public

26. In some countries, personal laws apply to certain groups of people and may not always be consistent with the principles of human rights. Where the laws provide equality and equity to individuals on par with others of society, this is good, but under international human rights law, personal laws that contradict or harm individuals are not permissible.

27. Please see Annex 4 for a list of legislations that have been introduced towards eliminating discrimination and violence.

education campaigns portray children belonging to vulnerable groups in positive ways by using innovative methods. For example, the culture of indigenous people is usually portrayed by media as primitive and backward. Since public awareness campaigns are critical in countering discrimination, the Committee has recommended that state parties carry out large campaigns on positive cultural practices.

Special Temporary Programmes

Special temporary programmes undertaken to achieve specified goals are directed towards a well-defined audience. Such programmes are very relevant when a group of children are facing discrimination from a particular group of people. For example, regarding the concluding observations of India's second periodic report (2004), the Committee recommended the government provide specific goals and timetables to achieve its goals based on rights and needs of the child.

Research and Collection of Disaggregated Data

Recommendations given by the Committee on Articles 2, 23 and 30 stressed the need of conducting research and of collecting disaggregated data to counter persistent discrimination. Collection of disaggregated data and research are of great importance to ensure the appropriate formulation and implementation of targeted policies to eliminate discrimination against children belonging to vulnerable groups.

Lack of disaggregated data is a serious constraint in formulating, implementing, and monitoring policies to eliminate discrimination against children. Hence, it is important to do a situational analysis and collect disaggregated data on children belonging to the most vulnerable groups. This data provide information in identifying the extent of discrimination in society and a baseline against which to determine whether progress has been made and where necessary to modify interventions if needed. Disaggregated data should be collected on the basis of gender, age, disability, ethnicity, religion, geographical location and so forth. These data can be utilised in formulating policies, programmes, laws, legislations and special measures for children belonging to vulnerable groups.

The Committee has also recommended that some countries carry out impact studies of policies. For example, the Indian Government has been asked to do gender impact studies while designing policies. This is extremely critical to study how policies of governments affect vulnerable groups. Research on the extent, causes, ways of prevention and cure of disability has also been recommended to many state parties.

Resource Allocation

Under Article 4 (government's obligation and responsibility to make the rights realisable) of the UNCRC, state parties are obligated to allocate resources for the implementation of the Convention. Allocation of resources has been a common thread throughout the Committee's recommendations on Articles 2, 23 and 30. The Committee has urged state parties to allocate the technical and financial resources required for betterment of children facing discrimination. Many of the projects and programmes for disabled and ethnic minority children might require substantial financial input, but the Committee recommends that states fulfil their responsibility to allocate resources to the maximum possible. Plus it recommends states to work and seek support from UN agencies and other civil society members to fulfil their obligations.

Capacity Building and Technical Assistance

States have been recommended to do capacity building of professionals working with children with disabilities and children belonging to indigenous groups. Professionals working with these children should be trained on the special needs of children, culture, language and other things so that they can work effectively and efficiently with them.

To implement Articles 2, 23, 30 and the overall UNCRC, the Committee has recommended that states receive technical assistance from UN bodies and other organisations with relevant expertise like UNICEF and WHO, on certain issues where the state parties do not have relevant expertise to implement interventions. Examples include indicators of monitoring special targeted programmes and methods of disaggregated data collection.

Recommendations

The UNCRC promotes a proactive approach to ensure that each child can have an equal opportunity. This means that governments are required to adopt comprehensive strategies to ensure equal opportunities for each and every child. Based on this review of the concluding comments, we recommend the following suggestions for Save the Children members and other child rights organisations to consider while developing intervention strategies targeting children belonging to marginalised or vulnerable groups:

Legislation & Policies

- To review existing legislation with respect to the principle of non-discrimination and lobby with governments on effective implementation by creating relevant support structures.
- Lobbying governments to strengthen weak legislation, recommend new legislation if needed and make existing legislation and policies more focused in tackling discrimination.

Data, Research and Information

- Assess and analyse the situation of children in all countries. Create mechanisms for effective disaggregated data collection, especially on children facing discrimination.
- Undertake research to study the causes and effects of discrimination. Develop mechanisms to counter these discriminations.
- Provide data to the Committee through shadow reports, to strengthen the Committee's recommendations to different governments.

Shadow Reports

- Support civil society in developing shadow reports highlighting issues of discrimination against children at different levels. Information provided to the Committee about this will help in lobbying the Committee on non-discrimination.

Capacity Building

- Ensure that staff, partners and other stakeholders are trained on non-discriminatory legislation and policies.

- Develop monitoring tools for self and partner organisations, including a code of conduct .
- Launch awareness raising activities on child rights and non-discrimination targeting parents, teachers, religious leaders, law enforcers and the judiciary.

Public Education

- An information strategy should be developed to foster tolerance, but also to expose past violations as consequences of policies and towards achieving reconciliation.
- Undertake mass awareness campaigns to popularise existing legislation and policies on non-discrimination. Legislation and policies on non-discriminatory legislations, policies and monitoring mechanisms to be published in local dialects.

Media

- Media should be sensitised on issues of discrimination and stereotypes. Further, media should be utilised to spread awareness on discriminations in society as well as legal mechanisms existing to counter the same.
- Opinion leaders and people who are strong role models, including for children, should be encouraged to stand up publicly against xenophobia and other prejudices.
- Develop information/documentation of groups that are discriminated against and disseminate these materials at all levels, especially to the judiciary, law enforcement, religious leaders, community and parents. Where necessary, all relevant materials should be translated to the local environment.

Advocacy & Lobbying

- Network and build alliances with like-minded organisations to lobby and advocate for change in national legislation (and if possible in the constitution) on the principle of non-discrimination, information sharing and act as pressure groups.
- Explore and document the forms and effects of discrimination, including protection measures as advocacy tools to pressure governments into action.

Education System

- School curricula should include human rights and peace education and the spirit of the rights of the child should influence all aspects of the daily life in schools.
- Education policies should be reviewed to combat discrimination and violence in schools and effectively develop attitudes and understandings of those that are different. This must include the quality of education for various groups of children.
- Legislation, policy and financial planning must encourage all schools to overcome exclusion and accessibility from the start (as opposed to as an afterthought) towards combating tendencies of inequitable access, unfair treatment and all forms of abuse, including violence, with clear time scales towards certain goals.
- Education must foster respect, tolerance and accessibility for vulnerable groups, taking into consideration language of teaching, timing, relevancy of curriculum, school environment and infrastructure.
- Include human rights and peace education in school curricula; the spirit of rights

of the child should influence all aspects of the daily life in schools.

- Challenge prejudice and ignorance by promoting public education campaigns to overcome prejudices, misconceptions and lack of understanding of the nature and implications of discrimination and to promote respect for the equal rights of every child.

Monitoring

- Discrimination is a subjective issue and therefore difficult to monitor. Effective indicators should be created to monitor the impact of non-discrimination interventions.
- A system of self-monitoring by an independent review mechanism (at all levels), for instance, by an ombudsman (looking at implementation of legislations, policies and budgets) and further encourage monitoring by non-government groups.
- Establish child rights commissions and ombudspersons for the implementation of the Convention including the principle of non-discrimination.

These are some measures we can undertake to improve work on non-discrimination and to promote inclusion. They are strategies or measures that can be undertaken to holistically address the principle of non-discrimination at multiple levels in Save the Children's work worldwide.

There is still a long way to go in addressing the principle of non-discrimination in a more strategic manner by child rights organisations and this notion has influenced contemporary child rights discourse in a big way. The principle of non-discrimination is a cross-cutting issue in strategies and approach, but at the same time more focus is being placed on non-discrimination as a programme in itself. At this point a few questions emerge, which need to be debated within Save the Children:

- Have we undermined the principle of non-discrimination in comparison to other general principles?
- How do we holistically address the issue of discrimination?
- Is there a need to develop a strategic framework on non-discrimination?



There are successful examples within the larger human rights discourse on development of strategic frameworks on discriminations for effective realisation of the rights of right holders. Much of the popular work done around CERD on countering discrimination strategically and effectively can be used as a basis to develop our own strategic framework on non-discrimination. As a rights-based organisation, Save the Children needs to work equally at all the levels and therefore there is a great need to holistically address the principle of non-discrimination in our work.



Annex I

Ratification of International Human Rights Treaties

	ICESCR	ICCPR	CERD	CEDAW	UNCRC
Afghanistan	24 Apr 1983	24 Apr 1983	05 Apr 1983	04 Apr 2003	27 Apr 1994
Bangladesh	05 Jan 1999	06 Dec 2000	11 Jul 1979	06 Dec 1984	02 Sep 1990
Bhutan			26 Mar 1973	30 Sep 1981	02 Sep 1990
India	10 Jul 1979	10 Jul 1979	04 Jan 1969	08 Aug 1993	11 Jan 1993
Maldives			24 May 1984	31 Jul 1993	13 Mar 1991
Nepal	14 Aug 1991	14 Aug 1991	01 Mar 1971	22 May 1991	14 Oct 1990
Pakistan			04 Jan 1969	11 Apr 1996	12 Dec 1990
Sri Lanka	11 Sep 1980	11 Sep 1980	20 Mar 1982	04 Nov 1981	11 Aug 1991

All data from: Office of United Nations High Commissioner For Human Rights: Status of Ratification of the Principal International Human Rights Treaties, as of 9 June, 2004 as referenced in Bandana Shrestha et al., 2005, *Demystifying Non Discrimination for Effective Child Rights Programming in South Central Asia*; Save the Children Sweden: Nepal.

Annex 2

3 December 2003

COMMITTEE ON THE RIGHTS OF THE CHILD
34th Session
15 September-3 October 2003

DAY OF GENERAL DISCUSSION
ON THE RIGHTS OF INDIGENOUS CHILDREN

RECOMMENDATIONS

Preamble

Recalling that article 30 and articles 17 (d) and 29.1 (c) and (d) of the Convention of the Rights of the Child are the only provisions of an international human rights instrument to explicitly recognize indigenous children as rights-holders, and

In light of the recommendations of the Special Rapporteur on the Situation of the Human Rights and Fundamental Freedoms of Indigenous People pertaining to children contained in his annual and mission reports to the UN Commission on Human Rights,

Following the request of the UN Permanent Forum on Indigenous Issues to the Committee on the Rights of the Child to hold a discussion day on the rights of indigenous children in order to promote greater awareness of the rights of indigenous children (E/2002/43 part I), and in light of the Permanent Forum's recommendations on the rights of indigenous children adopted during its first two sessions in 2002 and 2003,

In view of the 1994-2004 International Decade of the World's Indigenous;

Taking into account the International Labour Organization's Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries,

Recognizing the ongoing work of the open-ended inter-sessional UN Working Group on the Draft Declaration on the rights of Indigenous Peoples and the UN Working Group on Indigenous Populations regarding issues such as self-determination, land rights and other collective rights,

And although indigenous children are disproportionately affected by specific challenges such as institutionalization, urbanization, drug and alcohol abuse, trafficking, armed conflict, sexual exploitation and child labour and yet are not sufficiently taken into consideration in the development and implementation of policies and programmes for children,

The Committee on the Rights of the Child:

General

1. Strongly recalls the obligations of states parties under articles 2 and 30 of the Convention to promote and protect the human rights of all indigenous children.
2. Reaffirms its commitment to promote and protect the human rights of indigenous children by addressing more systematically the situation of indigenous children under all relevant provisions and principles of the Convention when periodically reviewing State party reports.
3. Calls on States parties, UN specialized agencies, funds and programmes, the World Bank and regional development banks, and civil society to adopt a broader rights-based approach to indigenous children based on the Convention and other relevant international standards such as ILO Convention 169, and encourages the use of community-based interventions in order to ensure the greatest possible sensitivity to the cultural specificity of the affected community. Particular attention should also be paid to the variety of situations and conditions in which the children live.
4. Acknowledges that, as stated in the Human Rights Committee's General Comment No. 23 on the rights of minorities (1994) and in ILO Convention 169, the enjoyment of the rights under article 30, in particular the right to enjoy one's culture, may consist of a way of life which is closely associated with territory and use of its resources. This may particularly be true of members of indigenous communities consisting a minority.

Information, data and statistics

5. Request States parties, UN specialized agencies, funds and programmes, in particular UNICEF and the ILO, the World Bank and regional development banks, and civil society including indigenous groups, to provide the Committee with specific information on laws, policies and programmes for the implementation of indigenous children's rights when the Committee reviews the implementation of the Convention at country level.
6. Recommends that States parties strengthen mechanisms for data collection on children so as to identify existing gaps and barriers to the enjoyment of human rights by indigenous children, and with a view to developing legislation, policies and programmes to address such gaps and barriers.
7. Encourages greater research, including the development of common indicators, into the situation of indigenous children in rural and urban areas by UN human rights mechanisms, UN specialized agencies, programmes and funds, international organizations, civil society and academic institutions. In this regard, the Committee requests all interested parties to consider initiating a global study on the rights of indigenous children.

Participation

8. In light of article 12, as well as articles 13 to 17, of the Convention, recommends that States parties work closely with indigenous peoples and organizations to seek consensus on development strategies, policies and projects aimed at implementing children's rights and set up adequate institutional mechanisms involving all relevant actors and provide sufficient funding to facilitate the participation of children in the design, implementation and evaluation of these programmes and policies.

Non-discrimination

9. Calls on States parties to implement fully article 2 of the Convention and take effective measures, including through legislation, to ensure that indigenous children enjoy all of their rights equally and without discrimination, including equal access to culturally appropriate services including health, education, social services, housing, potable water and sanitation.
10. Recommends that States parties, international organizations and civil society strengthen efforts to educate and train relevant professionals working with and for indigenous children on the Convention and the rights of indigenous peoples.
11. Recommends that States parties, with the full participation of indigenous communities and children, develop public awareness campaigns, including through the mass media, to combat negative attitudes and misperceptions about indigenous peoples.
12. Requests States parties, when updating the Committee on measures and programmes undertaken to follow up on the Declaration and Programme of Action adopted at the 2001 World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, to provide specific and detailed information on the situation of indigenous children.
13. To the extent compatible with articles 37, 39 and 40 of the Convention and other relevant UN standards and rules, the Committee suggests that States parties respect the methods customarily practiced by indigenous peoples for dealing with criminal offences committed by children when it is in the best interests of the child.
14. Requests the Special Rapporteur on the Situation of the Human Rights and Fundamental Freedoms of Indigenous people to pay particular attention to juvenile justice issues in his report on indigenous people and the administration of justice to be submitted to the 60th session of the Commission on Human Rights in 2004.
15. Calls on States parties to ensure the full implementation of articles 7 and 8 of the Convention for all indigenous children, by inter alia,
 - a) ensuring the existence of a free, effective and universally accessible birth registration system;
 - b) allowing indigenous parents to give their children a name of their own choosing, and by respecting the right of the child to preserve her/his identity;
 - c) taking all necessary measures to prevent indigenous children from being or becoming stateless.
16. Recommends that States parties take all necessary measures to ensure that indigenous children enjoy their own language. In that regard, States parties should pay particular attention to article 17 (d) of the Convention which calls on States parties to encourage the mass media to have particular regard to the linguistic needs of the child who is indigenous.

Family environment

17. Recommends that States parties take effective measures to safeguard the integrity of indigenous families and assist them in their child-rearing responsibilities in accordance with articles 3, 5, 18, 20, 25 and 27.3 of the Convention. For the purpose of designing such policies, the Committee recommends that States parties collect data on the family situation of

indigenous children, including children in foster care and adoption processes. The Committee recommends that maintaining the integrity of indigenous services, health and education programmes affecting indigenous children. The Committee reminds States parties, in cases where it is in the best interest of the child to be separated from his or her family environment, and no other placement is possible in the community at large, institutionalization should only be used as a last resort and be subject to a periodic review of placement. In accordance with art. 20.3 of the Convention, due regard shall be paid to ensuring continuity in the child's upbringing and to his or her religious, cultural, ethnic and linguistic background.

Health

18. Recommends that States parties take all necessary measures to implement the right to health of indigenous children, in view of the comparatively low indicators regarding child mortality, immunization and nutrition that affect this group of children. Special attention should also be paid to adolescents regarding drug abuse, alcohol consumption, mental health and sex education. The Committee also recommends States parties to develop and implement policies and programmes to ensure equal access for indigenous children to culturally appropriate health services.

Education

19. Recommends that States parties ensure access for indigenous children to appropriate and high quality education while taking complementary measures to eradicate child labour, including through the provision of informal education where appropriate. In this regard, the Committee recommends that States parties, with the active participation of indigenous communities and children:
- a) review and revise school curricula and textbooks to develop respect among all children for indigenous cultural identity, history, language and values in accordance with the Committee's General Comment no. 1 on the aims of education;
 - b) implement indigenous children's right to be taught to read and write in their own indigenous language or in the language most commonly used by the group to which they belong, as well as in the national language(s) of the country in which they live;
 - c) undertake measures to effectively address the comparatively higher drop out rates among indigenous youth and ensure that indigenous children are adequately prepared for higher education, vocational training and their further economic, social and cultural aspirations;
 - d) take effective measures to increase the number of teachers from indigenous communities or who speak indigenous languages, provide them with appropriate training, and ensure that they are not discriminated against in relation to other teachers;
 - e) allocate sufficient financial, material and human resources to implement these programmes and policies effectively.

International cooperation and follow-up

20. Encourages greater cooperation between human rights treaty bodies and UN mechanisms on indigenous issues.
21. Requests thematic and country-specific mandate holders of the Commission on Human Rights to pay special attention to the situation of indigenous children in their respective fields.
22. Recommends that the Special Rapporteur on the Situation of the Human

Rights and Fundamental Freedoms of Indigenous People dedicate one of his annual reports to the Commission on Human Rights to the rights of indigenous children. The preparation of such a report should include a survey of the implementation of the recommendations arising from the Committee's discussion day by all States parties to the Convention.

23. Encourages UN agencies, multilateral and bilateral donors to develop and support rights-based programmes for and with indigenous children in all regions.
24. Recognizing the strengths of indigenous communities to address many of the aforementioned issues, the Committee calls on the Permanent Forum on Indigenous Issues and the Special Rapporteur on the Situation of the Human Rights and Fundamental Freedoms of Indigenous people, to coordinate the elaboration of a set of best practices for the promotion and protection of the rights of indigenous children in consultation with relevant NGOs, indigenous experts and indigenous children.

N.B: These recommendations are the result of the day of general discussion on the rights of indigenous children and do not pretend to be an exhaustive list of recommendations regarding all rights covered by the Convention.

Annex 3

Involvement of NGOs and Shadow Reports

Country	Report	Alternative Report
Pakistan	Initial Report -CRC/C/3/Add.13	1. Organisation Mondiale Contre la Torture 2. Human Rights Commission of Pakistan
	Second Report- CRC/C/65/Add.21	1. Society for the Protection of the Rights of the Child 2. Coalition to Stop the Use of Child Soldiers
Sri Lanka	Initial report- CRC/C/8/Add.13	1. World Organisation Against Torture 2. NGO Forum on the Rights of the Child
	Second Report- CRC/C/70/Add.17	None
Nepal	Initial report- CRC/C/3/Add.34	1. World Organisation Against Torture
	Second Report- CRC/C/65/Add.30	1. Child Workers in Nepal Concerned Centre 2. National Alliance of Child Rights Organisations 3. Asian Center for Human Rights
Bangladesh	Initial report- CRC/C/3/Add.38 and 49	1. Bangladesh Shishu Adhikar Forum
	Second Report- CRC/C/65/Add.22	1. Human Rights Watch 2. Coalition to Stop the Use of Child Soldiers 3. Anti-Slavery International 5. Bangladesh Shishu Adhikar Forum 6. Asian Indigenous & Tribal Peoples Network 7. Organisation Mondiale Contre la Torture
Maldives	Initial Report- CRC/C/8/Add.33 and 37	None on 1 st Report.
	Combined Second and Third Periodic Report CRC/C/MDV/3	1. Hama Jamiyya and Care Society 2. Child Helpline International
India	Initial Report- CRC/C/28/Add.10	1. Human Rights Watch/Asia 2. Campaign Against Child Labour 3. Centre for Organisation Research and Education (CORE)
	Second Report- CRC/C/93/Add.5	1. Concerned for Working Children 2. Asian Center for Human Rights 3. CORE 4. India Alliance for Child Rights 5. Human Rights Watch, Children's Rights Division
Bhutan	Initial Report- CRC/C/3/Add.60	1. Bhutanese Refugee Support Group

Source- <http://www.crin.org/docs/resources/treaties/crc.25/annex-vi-crin.asp> as viewed on 24 May 2007

Annex 4

Existing Legislation Promoting Children's Rights

Legislation and Actions to Promote the Convention²⁸

Countries have also developed National Plans of Action (NPAs) to further the Convention, but NPAs do not always reflect children's rights or include all principles of the Convention.

Bangladesh has made positive development in the areas of children's human rights, including :

- Formulation of a revised National Plan of Action for Children
- National Plan of Action to Combat Sexual Abuse and Exploitation, Including Trafficking, 2002: trafficking for sexual exploitation, domestic labour and camel jockeying is still high, providing psychosocial support is among the long-term concrete plans of the state.
- Suppression of Violence against Women and Children Act, 2000 is rarely implemented and prosecution of perpetrators is rare even when the crime is serious due to societal attitudes.
- Acid Control Act 2002 and Acid Control Prevention Act 2002: inefficient implementation of the acts including care, recovery and reintegration of victims.

Bhutan has undertaken or proposed legislation/measures on the following :

- 1993 Rape Act: there are insufficient data and awareness regarding the phenomenon of sexual exploitation of children in Bhutan.
- Draft Immoral Trafficking Act: again, there are insufficient data and awareness regarding the sexual exploitation of children in Bhutan.
- Marriage Act 1980 has been amended.
- Draft Juvenile Justice Act: silent on minimum age of criminal responsibility, slow in adopting this act and criminal procedure legislation.
- Draft Civil and Criminal Codes: do not reflect a comprehensive, rights-based approach.
- 1997 School Code of Conduct: to respect the views of children in schools, but traditional attitudes towards children in society at large and within families may limit the exercise of this right.

Though Bhutan has proposed legislative measures with respect to child rights, they do not appear to reflect a comprehensive rights-based approach to the implementation of the Convention²⁹. In addition to the above, Bhutan has incorporated the goals contained in the World Declaration and Plan of Action of the 1990 World Summit for Children in its development plans. Bhutan has also started the Joint Verification Talks with Nepal, but the verification process of refugees and their children is progressing at a very slow rate.

India has introduced :

- Immoral Traffic and Prevention Act, 1986, but does not define trafficking and limits its scope to sexual exploitation.

28. *Demystifying Non Discrimination for Effective Child Rights Programming in South Central Asia* by Bandana Shrestha with Ravi Karakra and Lena Karlson. Chapter 5, pp. 28-31

29. Concluding Observations of the Committee on the Rights of the Child: Bhutan, 9 July 2001.

- Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, but any violations are still occurring and only a few of these violations are dealt with by courts; no special courts have been established to deal with this Act.
- Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993. These need to be fully implemented, people's awareness raised, including meetings with religious leaders to change prevailing attitudes.
- Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act 1994: this needs to be implemented and awareness raised regarding the Act. National Plan of Action for the Girl Child and Platform for Action: discriminatory societal attitudes and harmful practices towards girls still persist and are reflected in low enrolment and high dropout rates, early or forced marriages, and religion-based personal laws that perpetuate gender discrimination in areas such as marriage, divorce and inheritance.
- National AIDS Prevention and Control Policy, 2001: reports abound of rising number of children infected or affected by HIV and AIDS and discrimination faced by these children in society and in the educational system.
- Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995: disability was taken account of in 2001 census, but the country still lacks comprehensive statistical data and policy for disabled children, who face widespread discrimination, lack of facilities and services.
- Dowry Prohibition Act, 1961, The Karnataka Devadasis (Prohibition of Dedication) Act, 1982 and Rules 1982: harmful traditional practices still exist and dowry is widely practiced. There is lack of enforcement of the above mentioned Acts.
- Child Marriage Restraint Act, 1929: a high percentage of early and forced child marriage is still practiced.

Maldives has introduced :

- Law on the Protection of the Rights of the Child, 1991.
- National Plan of Action.
- National Council for the Protection of the Rights of the Child: monitors goals set by the NPA and the Unit for the Rights of the Child.
- Penal Code and the Law on the Protection of the Rights of the Child: not compatible with Article 37 (right not to be punished in a cruel way), Article 39 (right to help if hurt, neglected or badly treated) and Article 40 (right to defence).

Nepal has introduced :

- Child Labour (Prohibition and Regularisation) Act 2001: significant proportions of children are still working as labourers and in hazardous conditions, implementation of legislation weak due to lack of labour inspectors and the Act only applies to the formal sector.
- Children's Act, 1992: plans to amend this legislation in line with the Convention exist, but progress is slow and is not fully enforced. Under this Act, corporal punishment is recognised in homes, schools and other institutions of child care. Lacks complaint filing mechanisms in childcare homes and designated places of safety for child victims of abuse and neglect. (This Act has been amended in 2006, and is now more in line with the principles of the UNCRC).
- Human Trafficking and Control Act: a significant number of children are still trafficked for sexual exploitation and bonded labour; existing legal protection and implementation of the Act are inadequate.

- Kamaiya Prohibition Act, 2002: a large number of children are still working as bonded labourers and face serious difficulties in housing, work and education.
- National Plan of Action for Children, 2005-2015.
- Inclusion of child development policies in the Ninth Plan (1997-2002).
- National Human Rights Commission, 2000 has a Child Rights Desk, but the mandate of this Desk and the access and availability to complaint mechanisms to all children is limited.
- National Dalit Commission, 2002.
- Children's Clubs in more than 20 districts.
- National Poverty Alleviation Fund.
- Mandatory Birth Registration: persistent non-registration of birth exists, especially in rural areas.
- Disabled Protection and Welfare Act, 1982 and National Disability Service Coordination Committee, 2000: lacking in implementation of legislation, ineffective resources, early detection and intervention; insufficient efforts to facilitate inclusion into the educational system and society in general.

Pakistan has introduced :

- Ordinance for the Prevention and Control of Human Trafficking, 2002: significant numbers of children are still trafficked for sexual exploitation, bonded labour and camel jockeying.
- Juvenile Justice System Ordinance, 2000: poor implementation and many in authoritative positions are unaware of its existence.
- Established 49 Special Education Centres and disabled-friendly initiatives in cities: limited integration of disabled children into schools, social events and cultural activities still persistent.
- Introduction of birth registration in refugee camps, May 2002: Afghan refugee children living in harsh conditions with scarce water, food and limited shelter and medical care.

Sri Lanka has introduced :

- National Human Rights Commission, 1997: also investigates complaints regarding violations of children's rights, but awareness of this procedure needs to be conveyed to children. It also lacks sufficient human and material resources.
- National Child Protection Authority, 1999: mandate not clearly defined and ineffective coordination among departments.
- Sri Lanka is in the process of amending the Orphanages Ordinance No. 22, 1941 to penalise orphanages running without license, code of conduct and monitor them regularly.
- Penal Code (Amendment) Act No. 22, 1995: to protect children from sexual exploitation; however, legislation is not properly enforced and victims do not receive adequate recovery assistance.

Annex 5

Excerpts: Children with Disabilities rights addressed by the Convention on the Rights of People with Disabilities

The Convention applies to children as well as adults. Despite obligations to address the rights of children with disabilities in the Convention on the Rights of the Child, too little progress has been made to date. The Convention on the Rights of Persons with Disabilities therefore introduces a range of explicit measures to strengthen the protection of rights for children with disabilities, including:

- The preamble recognises that children with disabilities should enjoy all human rights on an equal basis with others.
- The general principles include respect for the evolving capacities of children and their right to preserve their identities.
- The general obligation requires that children with disabilities must be consulted when states parties are developing and implementing legislation and policies.

A dedicated article (Article 7) on children with disabilities introduces obligations to ensure the enjoyment of all human rights and fundamental freedoms on an equal basis with other children, to ensure that the best interests of the child are a primary consideration, and to provide disability and age appropriate assistance to ensure that children with disabilities are able to realise the right to express their views on all matters of concern to them and have them taken seriously in accordance with age and maturity³⁰.

Other provisions that apply directly to children with disabilities include:

- Age appropriate measures must be introduced to ensure that children with disabilities have access to justice.
- Measures must be taken to provide age-sensitive assistance to prevent exploitation, violence and abuse; age, gender and disability sensitive protection and rehabilitation services; and child-focused legislation to ensure that exploitation, violence and abuse are identified and investigated.
- Measures must be taken to ensure that children with disabilities are registered immediately after birth.
- Children with disabilities are entitled to retain their fertility, thereby prohibiting sterilisation.
- Children with disabilities have equal rights with respect to family life and states parties are obligated to provide services and support to families to prevent abandonment, concealment and segregation. In addition, children with disabilities must not be separated from parents unless this is in their best interests and never on the basis of disability. Where parents are unable to care for children, efforts must be made to provide alternative care within the wider family or within the community in a family setting.
- Education at all levels must be inclusive, and children with disabilities have an equal entitlement to general education. Inclusive education requires provision of all necessary

30. Article 7 hence ensures that the rights of children with disabilities is mainstreamed throughout the CRPD.

support and technical aids, including respect for linguistic identity, and facilitating the learning of Braille, orientation and mobility skills, and training of teachers.

- Children with disabilities must be provided with equal access to participation in play, recreation, and leisure and sporting activities, including in schools.

The incorporation of these provisions represents a major step forward for children with disabilities. The next challenge is to ensure that they are translated into concrete measures on the ground, which lead to real changes in their lives.

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