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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights  
including the right to development**

### **Joint report of the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Representative of the Secretary-General on Violence against Children\* \*\***

#### *Summary*

The present report is submitted pursuant to Human Rights Council resolution 13/20 entitled “Rights of the child: the fight against sexual violence against children”. It provides an overview of accessible and child-sensitive counselling, complaint and reporting mechanisms to address incidents of violence, including sexual violence and exploitation, and draws attention to positive developments and persisting challenges. The report also highlights legal obligations, roles and responsibilities of State institutions and other key stakeholders, and makes recommendations for the strengthening of these mechanisms to safeguard children’s right to freedom from all forms of violence.

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\* The annex to the present report is circulated as received, in the language of submission only.

\*\* Late submission.

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## I. Introduction

### A. Context

1. In its resolution 13/20,<sup>1</sup> the Human Rights Council invited the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Representative of the Secretary-General on Violence against Children to report to the Council at its sixteenth session on effective and child-sensitive counselling, complaint and reporting mechanisms to which children can safely report incidents of violence, including sexual violence and exploitation. The Council invited them to cooperate with States and other relevant partners such as the Committee on the Rights of the Child, the Special Representatives of the Secretary-General for Children and Armed Conflict and on Sexual Violence in Conflict, national human rights institutions, United Nations agencies, regional organizations, civil society organizations and children themselves.

2. The need to establish safe, well-publicized, confidential and accessible mechanisms for children has been a serious concern voiced by both the Special Rapporteur on the sale of children and the Special Representative on violence against children and addressed by the United Nations study on violence against children (“United Nations study”, see A/61/299). Violence is seldom reported and in many circumstances children feel pressed to conceal it, particularly when it is perpetrated by people they know and trust. The United Nations study recommended that mechanisms be established, including telephone helplines, through which children can report abuse, speak to a trained counsellor in confidence and ask for support and advice. It underscored the need to make all children aware of such mechanisms, and recommended that in every locality and every setting there should be well-publicized and easily accessible services to investigate reports of violence against children.

3. Over the past years, the promotion of child-sensitive mechanisms has gained increasing relevance, including as a result of the recognition of the right to accessible and effective remedies by international human rights instruments and of the significant jurisprudence of treaty-monitoring bodies in this area. The Committee on the Rights of the Child has addressed this question in its dialogue with State parties and in several general comments, including the most recent on the right of the child to freedom from all forms of violence.<sup>2</sup>

4. Significant political commitments have also been made in this area. The declaration and call for action agreed upon at the Third World Congress against Sexual Exploitation of Children and Adolescents calls upon States to establish, by 2013, an effective and accessible system for reporting, follow-up and support for child victims of sexual exploitation.

5. Despite these significant developments, many challenges remain. In their missions across regions, both the Special Representative on violence against children and the Special Rapporteur on the sale of children have observed that counselling, complaint and reporting services are frequently unavailable and, when they exist, tend to lack the necessary resources and skills to address children’s concerns and promote children’s healing and reintegration. Moreover, children lack trust in them, fearing they will not be believed, and that they may endure further stigmatization, harassment, abandonment or reprisals if they

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<sup>1</sup> Para. 17.

<sup>2</sup> General comment No. 13 (2011).

make known any incidents of violence. In most cases, children are unaware of the existence of such services, lacking information about where to go and whom to call to benefit from advice and assistance, to overcome trauma and re-shape their lives. Overall, they feel uncertain as to whether and how impunity can be fought.

## **B. Objectives**

6. With these concerns in mind, the report was developed with the following objectives:

(a) To provide an overview of available models of accessible and child-sensitive counselling, complaint and reporting mechanisms established at the governmental level, and as developed by independent institutions and civil-society and community-based organizations;

(b) To draw attention to positive developments, as well as challenges, in the use of such mechanisms, including in terms of accessibility, confidentiality, child participation, effectiveness, safeguard of privacy and protection of victims of violence, including sexual violence and exploitation;

(c) To highlight legal obligations, roles and responsibilities of State institutions and other key stakeholders;

(d) To make recommendations for the strengthening of effective, child-sensitive counselling, complaint and reporting mechanisms to protect children from violence.

## **C. Methodology**

7. The report was developed with the following methodological approach:

(a) A literature review of relevant documentation;

(b) An expert consultation organized by the Office of the United Nations High Commissioner for Human Rights and the Office of the Special Representative of the Secretary-General on Violence Against Children, with the participation of the Special Rapporteur on the sale of children, and a cross-regional group of governmental and non-governmental experts, national independent institutions for children's rights, United Nations agencies and the Committee on the Rights of the Child;

(c) Request for information sent to Permanent Missions to the United Nations, as well as to United Nations departments, funds, programmes and specialized agencies, and other regional and inter-governmental organizations, which generated significant contributions.<sup>3</sup> A questionnaire circulated to UNICEF country offices also yielded

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<sup>3</sup> Replies were received from Argentina, Austria, Brunei Darussalam, Canada, Colombia, Cyprus, Germany, Greece, Hungary, India, Ireland, Lebanon, Lithuania, Mauritius, Mexico, Monaco, Pakistan, Portugal, Qatar, Russian Federation, Spain, Switzerland, Turkmenistan, Ukraine and Uzbekistan. United Nations contributions to the report were sent by: United Nations Integrated Peacebuilding Office in the Central African Republic (BINUCA), International Labour Organization (ILO), United Nations Interregional Crime and Justice Research Institute (UNICRI), United Nations Office on Drugs and Crime (UNODC), United Nations Assistance Mission for Iraq (UNAMI), United Nations Integrated Peacebuilding Office in Guinea-Bissau (UNIOGBIS), Office of the United Nations High Commissioner for Refugees (UNHCR), United Nations Children's Fund (UNICEF), Innocenti Research Centre, and the World Food Programme (WFP).

significant information.<sup>4</sup> The NGO Advisory Council for follow-up to the United Nations study, the Danish Refugee Council and Plan International also provided valuable information to the report;

(d) Voices of young people were essential, including as derived from studies and surveys and children's recommendations, and from the experience of the authors of the present report through their work and meetings held with young people.

8. Only a selection of the wealth of experiences and initiatives on which information was received is outlined in the present report.

## **D. Conceptual and normative framework**

### **1. Conceptual framework**

9. The Convention on the Rights of the Child defines a child as a person under the age of 18. The Convention recognizes children's freedom from violence in several of its provisions,<sup>5</sup> especially in article 19 on freedom from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

10. The term "counselling" covers: the provision of information and advice to empower children and support others acting on children's behalf regarding all courses of action required to prevent or respond to incidents of violence; legal counselling; and psychological or psychosocial counselling, that is, therapeutic interventions designed to prevent, mitigate or repair the mental, moral and social damage caused by violence, including to help address feelings of fear, guilt, shame and confusion children may experience.

11. Information and advice provided to children should be conveyed in a manner adapted to their age, maturity and circumstances, in language children can understand and which is gender- and culture-sensitive, and supported by child-friendly materials and information services.

12. There is no sharp conceptual distinction between complaints and reports. Complaints result from the failure to prevent violence and ensure the effective protection of victims. In the present report, the term "complaint" is used to refer to communications about violence made by victims or those acting on their behalf to some competent authority in the expectation of receiving protection, assistance or redress, including the investigation of incidents of violence and the imposition of sanctions against those found responsible. The term "reporting" is used here to refer to communications on incidents of violence made to the competent authorities by someone, be it a child or an adult, other than the victim.

13. The struggle to protect children from violence requires a holistic approach, involving: awareness-raising, prevention, law enactment and enforcement, and sound data and research; the protection, treatment, recovery and social reintegration of child victims; and the investigation and punishment of perpetrators. Although the present report is focused on counselling, complaint and reporting mechanisms, some brief comments on their links to other components of children's freedom from violence are needed.

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<sup>4</sup> Replies were received from 40 country offices in all regions.

<sup>5</sup> Arts. 19, 28, para. 2, and 37.

14. First, advocacy and awareness-raising on children's right to freedom from violence<sup>6</sup> are essential to promote more effective mechanisms. If violence remains pervasive and socially accepted, most children will not complain about it, most adults will not report violence against children, and professionals may hesitate to act.<sup>7</sup>

15. Second, complaints and reporting on violence against children are intimately related to the larger issues of criminal and child protection proceedings. Whether complaints and reports lead to appropriate legal or other relevant action is a key indicator of their effectiveness. Unfortunately, many challenges prevail with a persisting lack of information on the outcome of child protection and criminal proceedings involving child victims, on the gap between incidents reported and cases handled by the courts and other competent authorities, and on the impact of such proceedings on the children concerned.

## **2. The normative framework**

16. International standards frame the development of counselling, reporting and complaint mechanisms. These include the Convention on the Rights of the Child and its Optional Protocols, significant regional human rights instruments, as well as decisive commitments on children. An overview of these standards and commitments is included in the annex to the present report.

## **II. Current situation**

17. States have a leading responsibility in safeguarding children's protection from violence, through counselling, complaint and reporting mechanisms. Many other actors promote this goal, including national human rights institutions, civil-society organizations, in particular NGOs and community-based organizations, professional associations, religious groups, foundations and the private sector. Moreover, child participation is vital to break the invisibility of violence and inform child-sensitive approaches, including the development of safe and effective counselling, reporting and complaint mechanisms.

### **A. Voices of young people**

18. Children's views and recommendations helped shape the United Nations study and remain essential for its follow-up; they were also highly relevant in the special session of the General Assembly on children (8-10 May 2002) and in the three World Congresses against sexual exploitation of children and adolescents. Some of children's key recommendations include: increased access to information on the rights of the child and accessibility to child-friendly services, including telephone helplines with free access; establishment of child protection agencies in local communities to protect vulnerable children; and the creation of an ombudsman's office in each country.

19. During field missions and consultations held with children by the Special Representative and the Special Rapporteur, children complained about the lack or insufficient availability of such mechanisms and their inability to provide support in a safe, child-sensitive and effective manner. They recognized that mechanisms are insufficiently known by children, who have limited access to information, particularly in rural or remote

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<sup>6</sup> Convention on the Rights of the Child, art. 42.

<sup>7</sup> The CURE project makes detailed and valuable recommendations regarding awareness-raising. *Child Victims in the Union – Rights and Empowerment: A report of the CURE Project 2009-2010* (Umeå, European Union/The Crime Victim Compensation and Support Authority, Sweden, 2010).

areas; mechanisms are largely inaccessible to vulnerable children, including those with disabilities or belonging to minorities. Children voiced their lack of confidence in existing services and the fear that these may disclose children's privacy and put them at risk of further harassment and reprisals.

## **B. Child-sensitive counselling, complaint and reporting mechanisms**

### **1. Counselling mechanisms**

20. Violence against children, including sexual violence, continues to be surrounded by stigma and secrecy. Access to counselling, complaint and reporting procedures is thus imperative for children as well as adults who have endured violence during their childhood.

21. Research emphasizes that very young children, as well as children belonging to other vulnerable groups, are at particular risk of violence. For these children, special protection measures are essential to safeguard their rights and to ensure that they receive support from well-resourced institutions, services and professionals in a sensitive, relevant and ethical manner.

#### *(a) Developments at the national level*

22. In many countries important initiatives have been undertaken to raise public awareness about the need to protect children from violence, to promote non-violent and positive child-rearing and parenting skills, and to encourage child rights training for relevant professionals. Children's skills in violence prevention are enhanced through child clubs and debates in school settings and peer-to-peer initiatives, such as trainings and awareness-raising offered by youth for young people in community spaces. These valuable initiatives enhance the understanding of what child victims may endure, and encourage those at risk to feel confident in seeking help and reporting incidents of violence.

23. Counselling mechanisms also provide children and adults with advice and information on where and how to seek advice and support, including to lodge complaints or report incidents of violence.<sup>8</sup> In this regard, significant efforts have been deployed by Governments and members of civil society, including through media campaigns, distribution of flyers and information on hotline numbers and access to available services.

24. Most countries that contributed information to the present report indicated that dedicated arrangements for children were in place for counselling, reporting and complaints on incidents of violence against children. In some countries, ministries responsible for children and family affairs provide counselling services, including but not always specifically for children, and offer services such as emotional support, information, referrals and practical assistance. Several countries offer special counselling programmes for victims of crime, such as youth welfare offices and children's shelters with specialized professionals (for example, psychologists, social workers, lawyers), and provide multidisciplinary child protection teams in paediatric hospitals.

25. Counselling services are also available through community-based organizations. A number of countries also reported that counselling services are provided by multidisciplinary teams, including child protection specialists, law enforcement officers, health-care workers, social workers, and social pedagogues and psychologists working in

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<sup>8</sup> Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20).

schools. In almost all country contributions to the present report, telephone helplines are identified as an important aspect of counselling for children.

(b) *Key lessons and persisting challenges*

26. The analysis conducted for the present report highlighted important lessons which should inform work in this area:

(a) Counselling is more effective when it is part of a broader approach that includes medical care, social assistance, legal services and financial or educational support. The support to be provided should be determined by a plan based on an assessment of the victim's needs and circumstances, and implemented with close cooperation between service providers;<sup>9</sup>

(b) Counselling should be provided to the child and the family, as other members may also be victims; those who have not suffered violence in person may well suffer fear, guilt or anxiety. If the perpetrator of violence is a family member, he or she also should be offered therapy, at least until such time as the competent authorities may decide to take other action; although children have the right to be protected from all violence, whether or not protection requires removal of the offender from the home depends on the circumstances. Finally, the ultimate reason the family should be offered counselling is that "helping the family will often help the child".<sup>10</sup>

(c) Ideally, counselling should be offered by qualified professionals;<sup>11</sup> however, these are often scarce in many parts of the world. Specialized services for children are even scarcer, and often are lacking "in the vast majority of countries outside of Europe and the Americas".<sup>12</sup>

27. Violence can have significant and life-long effects on the child's mental health and development, and psychosocial support is critical for children's recovery. As noted in the Convention on the Rights of the Child, psychological recovery and social reintegration of child victims of violence should be promoted in an environment that fosters their health, self-respect and dignity (art. 39).

28. Psychosocial support should be provided by a "trusted, non-offending caregiver who takes the child's situation seriously".<sup>13</sup> Counselling must not only be child-sensitive, but should also be "culturally sensitive" and take into account gender and factors such as disability and ethnicity.<sup>14</sup>

29. Information received for the present report reveals that counselling programmes for children still face significant challenges. In their submissions, Governments mentioned shortages of specialized personnel, lack of training and resources, and lack of cooperation between relevant agencies; and acknowledged that services are mainly provided to children and their families in urban areas.

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<sup>9</sup> WHO, *Preventing Child Maltreatment: A Guide to Taking Action and Generating Evidence* (2006), pp. 57-58.

<sup>10</sup> *Ibid.*, p. 56.

<sup>11</sup> *Ibid.*

<sup>12</sup> World Psychiatric Association et al., *Atlas of Child and Mental Health Resources* (Geneva, WHO, 2005), p. 17.

<sup>13</sup> WHO, *Preventing Child Maltreatment*, pp. 55-56.

<sup>14</sup> *Ibid.*, pp. 56 and 67.

30. Although in some countries the right to counselling is formally recognized, the services available are scarce and largely provided by voluntary agencies. Informal estimates indicate that less than 25 per cent of children in need of counselling services receive them.

31. Ensuring that all children, including those who have experienced violence, have access to child-sensitive and effective counselling is a daunting, long-term challenge. This neglected area should be strengthened, including through the promotion of sensitization and social-mobilization campaigns, the adoption of relevant legal, educational, and social measures, the training of relevant professionals, and the support of mental health services for children and adolescents. The empowerment and involvement of young people in the design and evaluation of these actions remains critical for their effectiveness.

## 2. Complaints mechanisms

32. At the national level, different bodies receive complaints from children whose rights may have been violated. They include judicial and administrative authorities, and national independent human rights institutions, including ombudspersons for children.

33. Complaints mechanisms serve various purposes, including ensuring the protection of victims and the prevention of renewed acts of violence. Some mechanisms are designed to impose criminal sanctions on the offender. Others, including within school, social-welfare, law-enforcement and correctional systems, impose administrative responsibility in order to deter future acts of violence, or are designed to compensate the victim for damages suffered. Providing the victim with assistance is not the main purpose of complaint mechanisms, although it may be part of the response to complaints.

34. The concept of “complaint” implies that the body competent to receive it has legal powers to take appropriate action. In this sense, complaints are not addressed to civil society organizations, although these organizations may offer advice or assist in bringing complaints forward to the competent authorities. The contribution of civil society to making complaints mechanisms known, accessible, effective and child-friendly cannot be underestimated.

### (a) *The right of children to lodge complaints*

35. In some countries, legislation recognizes a broad general right of children to lodge complaints before public authorities. The effectiveness of such legislation is closely associated with children’s access to information on their right to access justice and to complain before a judicial or non-judicial mechanism. The Costa Rican Children’s and Adolescents’ Code, for example, provides that: “Persons under the age of majority shall have the right to seek shelter, help and advice when a threat to their rights entails a serious risk to their physical or spiritual health; and to receive timely assistance and protection from the competent authorities.”<sup>15</sup> The Paraguayan Children’s and Adolescents’ Code recognizes the right of children to personally request any public body or official to take action that is within their mandate or competence, and to receive a timely reply.<sup>16</sup> In Romania, Law No. 272/2004 on the protection and promotion of the rights of the child recognizes the child’s right to personally make complaints regarding violations of his or her fundamental rights.<sup>17</sup> In Spain, the law recognizes children’s right to receive from the public authorities adequate assistance in guaranteeing respect for their rights, including the right to

<sup>15</sup> Law No. 7739, art. 19, in Daniel O’Donnell, “The right of children to be heard: children’s right to have their views taken into account and to participate in legal and administrative proceedings”, Innocenti Working Paper (Florence, Innocenti Research Centre, 2009), p. 28.

<sup>16</sup> Law No. 1.680 of 2001, art. 26, in Donnell, “The right of children”, p. 28.

<sup>17</sup> Art. 29, para. 1, in “The right of children”, p. 27.

request protection or support from any public institution and to make complaints regarding violations of their rights to the public prosecutor or the Ombudsman.<sup>18</sup>

36. Some laws recognize the legal standing of children to bring complaints to the attention of judicial authorities. Many of the children's codes adopted in Latin America recognize this right.<sup>19</sup> In the Philippines, child rights legislation expressly authorizes children to seek legal redress for violations of the rights recognized therein, including the right to be free from physical, sexual and psychological abuse.<sup>20</sup> The Children's Act (No. 38 of 2005) of South Africa recognizes the right of children to seek judicial remedy for violations or threatened violations of the Act or of constitutionally recognized rights.<sup>21</sup>

37. In some countries the exercise of this right is limited to older children. In Russia, for example, children 14 or older can take legal action to seek protection from their parents or other persons exercising parental authority.<sup>22</sup> In Tunisia, children over the age of discretion (13 years) may take legal action in "matters of special urgency and in the case of danger at home".<sup>23</sup>

38. Where the right to seek a judicial remedy is limited to older children, younger children may turn to administrative bodies, which may initiate legal proceedings if they consider it appropriate. In Ecuador, for example, where children over the age of 12 "may personally take legal action for the protection of their rights", younger children may request assistance to protect their rights when action concerning their legal guardian is needed.<sup>24</sup> In the Russian Federation and Belarus, children of any age may make complaints to the competent administrative authorities concerning parents or other persons acting in loco parentis.<sup>25</sup>

(b) *Administrative complaints*

39. Some international instruments require the establishment of special complaints mechanisms within institutions for children. The Guidelines for the Alternative Care of Children, for example, provide that "children in care should have access to a known, effective and impartial mechanism whereby they can notify complaints or concerns regarding their treatment or conditions of placement".<sup>26</sup> The United Nations Rules for the Protection of Juveniles Deprived of Liberty indicate, inter alia, that children in closed facilities of any kind "should have the opportunity of making requests or complaints to the director", and the right to make complaints to administrative and judicial authorities, and to be informed of the response without delay.<sup>27</sup> Moreover, the Rules call for the establishment

<sup>18</sup> Organic Law No. 1/1996, art. 10, in Donnell, "The right of children", p. 29.

<sup>19</sup> See for example the Children's and Adolescents' Code of the Plurinational State of Bolivia, art. 213; of Costa Rica, art. 104; and of Paraguay, arts. 119 (a), 123 (b) and 161, in Donnell, "The right of children", pp. 9 and 28.

<sup>20</sup> Republic Act No. 7610 on the Special Protection of Children against Child Abuse, Exploitation and Discrimination, sections 27 (a) and 3 (a).

<sup>21</sup> In Donnell, "The right of children", p. 27.

<sup>22</sup> Non-Litigious Civil Procedure Act, art. 64; second periodic report of the Russian Federation (CRC/C/65/Add.5), para. 71 (o).

<sup>23</sup> Code for Civil and Commercial Procedure, art. 19, para. 1, in Donnell, "The right of children", p. 12.

<sup>24</sup> Children's and Adolescent's Code, art. 65, in Donnell, "The right of children", p. 28.

<sup>25</sup> CRC/C/65/Add.5, para. 71 (o); Belarus Child Rights Act (No. 2570-XII), art. 13, in "The right of children", p. 29.

<sup>26</sup> General Assembly resolution 64/142, annex, para. 99.

<sup>27</sup> General Assembly resolution 45/113, annex, paras. 75-76.

of an independent office, such as an ombudsman, to receive and investigate complaints made by juveniles deprived of their liberty and to assist in the achievement of settlements.<sup>28</sup>

40. Some countries have established specialized administrative procedures for children in specific contexts. In Slovenia, there is a procedure to investigate complaints regarding treatment of children by the police.<sup>29</sup> The Costa Rican Children's and Adolescents' Code recognizes the right of students to make complaints of physical, sexual or emotional abuse in schools.<sup>30</sup> According to the UNICEF survey, complaints procedures are available for law enforcement agencies, and also for the child welfare and school systems.

(c) *Are complaints procedures child-sensitive?*

41. Many norms and recommendations have been adopted on the sensitivity of proceedings concerning children affected by violence. They often focus on investigations and legal proceedings, although less on the receipt and handling of complaints, which are a critical initial stage of a legal or administrative process. In this regard, some principles should be respected:

- (a) The right of the child to respect for his or her dignity at all times;
- (b) The child's right to privacy and to participation in meetings or interviews in a secure and reassuring environment;<sup>31</sup>
- (c) The best interests of the child as a primary concern;
- (d) The child's right to protection from discrimination and to be treated in accordance with the principle of equality;
- (e) Respect for the child's views in addressing the complaint;
- (f) The child's right to be promptly provided with necessary information in an accessible language, including possible options and consequences of the complaint, procedures involved, and available protective measures and support services;
- (g) Provision of appropriate professional or paraprofessional support to the child, including in overcoming the adverse physical, psychological and social consequences of the incident addressed by the complaint;<sup>32</sup>
- (h) Decisions should be as expeditious as possible.<sup>33</sup>

42. Important community-based mechanisms have been established to address situations of violence against children, and to support women and children in their efforts to gain access to justice. The Paralegal Committees in Nepal work to prevent and address violence, including abuse and exploitation, and discrimination suffered by women and children. They promote awareness-raising activities, early detection and prevention, and case facilitation and reconciliation, as well as monitoring and reporting. They act as watch groups and as a

<sup>28</sup> Ibid., para. 77.

<sup>29</sup> Second periodic report of Slovenia (CRC/C/70/Add.19), para. 23.

<sup>30</sup> Arts. 66 (a), 67 and 68; see also the Ecuadorian Children's and Adolescents' Code, art. 41, in "The right of children", p. 33.

<sup>31</sup> Economic and Social Council resolution 2005/20, paras. 10-13 and 16.

<sup>32</sup> See for example the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, art. 8, para. 1 (d), and Economic and Social Council resolution 2005/20, paras. 16 and 22.

<sup>33</sup> See for example the Optional Protocol on the sale of children, child prostitution and child pornography, art. 8, para. 1 (g), and Economic and Social Council resolution 2005/20, para. 30 (c).

bridge between communities and service providers, and help promote change in social attitudes that condone violence and hamper children's rights.

43. Several countries produce child-friendly materials to help children submit complaints and seek redress, including on available judicial or non-judicial complaint mechanisms and applicable proceedings.

44. Some countries reported having special complaints procedures for children. Many have established an independent child advocate, ombudsman or commission responsible for representing children's rights, interests and viewpoints; in some cases, these institutions are competent to investigate complaints of child rights violations, to provide victims with redress, and to identify *ex officio* relevant areas of concern which they can pursue with competent authorities. Other measures include the establishment of children's courts and special police brigades, as well as legal safeguards to extend the age for submitting complaints and compensation claims beyond 18 years.

45. Replies from countries reveal, however, that very few have evaluated the child-friendliness of complaints and reporting procedures. This is an area where continued efforts should be pursued.

(d) *Complaint procedures at the international level*

46. In conformity with relevant human rights standards, complaint mechanisms have also been established at the international<sup>34</sup> and regional<sup>35</sup> levels. At present, an open-ended working group of the Human Rights Council is considering an optional protocol to the Convention on the Rights of the Child to establish a communications procedure.

47. Other human rights bodies and mechanisms, including special procedures, can receive allegations of children's rights violations falling within their mandate. In practice, submissions are virtually never received from children themselves.

### 3. Reporting mechanisms

(a) *Mandatory reporting*

48. Education on the rights of the child and knowledge about how and to whom violence can be reported are essential dimensions of an effective reporting system which should be child sensitive, supported by effective and well-resourced services and respectful of children's rights.

49. In its general comment No. 13, the Committee on the Rights of the Child stresses that in every country the reporting of instances, suspicion or risk of violence should, at a minimum, be required by professionals working directly with children. When reports are made in good faith, processes must be in place to ensure the protection of the professional making the report.

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<sup>34</sup> For example, article 77 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the Optional Protocols to the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of Persons with Disabilities.

<sup>35</sup> For example, the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights, the European Committee of Social Rights and the European Court of Human Rights.

50. Where reporting is mandatory, there are significant differences in the scope of the obligation to report. In some jurisdictions, the obligation is binding on all persons.<sup>36</sup> Where it applies to professionals who work with children, those most often covered are law-enforcement officers, social workers, teachers, childcare providers, medical doctors and other health-care workers.<sup>37</sup> Sometimes the obligation extends to other professions, including drug counsellors and probation officers.

51. Various forms of mandatory reporting were addressed by Government contributions to the present report. In most cases, the obligation relates to sexual, physical and psychological violence.

52. However, whether reporting is mandatory or not, its effectiveness depends on the quality of services that are available if the report, on examination, is found to be grounded. Requiring suspected abuse to be reported serves little purpose if the child protection system is weak, or if there is excessive reliance on institutionalization.<sup>38</sup> The introduction of mandatory reporting has sometimes led to an increase in the number of reported cases that, following investigation, were not substantiated.<sup>39</sup> Legislation that leads to overreporting increases the burden on the child welfare system, reducing its capacity to provide assistance.<sup>40</sup>

53. It is argued that the stronger the links are between the child protection system and the community, the less need there is for mandatory reporting, because child welfare personnel will become aware of most cases of violence without it. Mandatory reporting may also create an adversarial relationship between families and child protection authorities,<sup>41</sup> and discourage families from seeking assistance voluntarily; and it can stigmatize families affected by extreme poverty and unemployment when the scope of mandatory reporting includes neglect.<sup>42</sup> These concerns underline the need for mandatory reporting to be adapted to the needs and circumstances of each society.

54. Reporting by professionals who work with young children is especially important; these children are more susceptible to injury and unable to make complaints, and early detection and intervention can help reduce the risk of repeated abuse and long-term health and social consequences.<sup>43</sup>

55. The authors of the present report consider that some form of mandatory reporting, including the reporting by professionals who work with children, of sexual abuse and acts of violence causing physical injury and psychological violence is appropriate for all societies.

(b) *Mandatory reporting within specific systems*

56. Mandatory reporting often presumes that a professional is in possession of information about violence caused by a third party with whom she or he has no institutional

<sup>36</sup> In the United States of America, such laws exist in 18 states (as at April 2010). See [www.childwelfare.gov/systemwide/laws\\_policies/statutes/manda.cfm](http://www.childwelfare.gov/systemwide/laws_policies/statutes/manda.cfm).

<sup>37</sup> Of the replies to the UNICEF survey, 8 mention mechanisms that specifically address violence within schools; 10 mention mechanisms that address violence within the child welfare system; and 13 mention mechanisms that address violence within the law enforcement system.

<sup>38</sup> WHO, *Preventing Child Maltreatment*, p. 62.

<sup>39</sup> M. Harries et al., "Mandatory reporting of child abuse: evidence and options" (University of Western Australia, 2002), pp. 14-15.

<sup>40</sup> WHO, *Preventing Child Maltreatment*, p. 59.

<sup>41</sup> *Ibid.* p. 62.

<sup>42</sup> Harries, "Mandatory reporting", p. 42.

<sup>43</sup> WHO, *Preventing Child Maltreatment*, p. 51.

links. But mandatory reporting is also relevant in cases when acts of violence are committed by a colleague. The United Nations Rules for the Protection of Juveniles Deprived of Liberty indicate: "Personnel who have reasons to believe that a serious violation of the present Rules has occurred or is about to occur should report the matter to their superior authorities or organs vested with reviewing or remedial power."<sup>44</sup>

57. The Guidelines for the Alternative Care of Children provide that all agencies and facilities for children in need of alternative care "should develop a staff code of conduct ... [that] includes clear reporting procedures on allegations of misconduct by any team member" (para. 107).

58. Reporting is particularly important for those who provide medical or psychosocial assistance within residential facilities. The failure of such personnel to report evidence of violent treatment contributes to an atmosphere of impunity that can easily lead to a persistent pattern of violence.

59. In some countries, such as in the United States of America, federal law requires Internet service providers who have actual knowledge of child pornography on their servers to report such information to the CyberTipline of the National Center for Missing and Exploited Children.

60. The authors of the present report consider that standards establishing an obligation to report violence should be incorporated into the regulations or rules of conduct of all institutions or agencies that deal on a regular basis with children at risk of violence, such as residential facilities, schools, medical services for children and law enforcement bodies.

(c) *Voluntary reporting*

61. Several countries contributing to the present report mentioned the adoption of special measures to encourage the reporting of violence against children, including sexual violence perpetrated by tourists. One country reported that every citizen had an obligation to file a complaint in cases of child rights violations; another reported having in place legislation to protect those who report child abuse. In some countries, service providers in the child protection system or schools are obliged to signal a situation to the child welfare system, setting in motion procedures in cases of child abuse. In others, there are channels that allow children themselves to report a risky situation, through telephone hotlines established by such entities as the ombudsman. Some countries have special e-mail addresses or toll-free numbers, including for reporting suspected cases of child sexual exploitation of children on the Internet. One country reported that it is currently conducting an assessment of the obstacles faced by victims of crimes to make complaints.

62. Two thirds of the UNICEF country offices that responded to the questionnaire reported that the country in which they were based had established a programme to encourage voluntary reporting. However, most also reported that the law does not protect persons who make a report.

63. Another example of voluntary reporting is the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism. Tour operators and tourism organizations that adopt and sign the Code of Conduct commit to informing customers on their child protection policy, to training staff, to reporting and to applying other measures to protect children.

64. One legislative measure that encourages voluntary reporting is the recognition of the confidentiality of the identity of persons who report violence. The Council of Europe

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<sup>44</sup> Para. 87 (c).

Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse requires States parties to ensure that the rules of confidentiality of information imposed on professionals who work with children do not constitute an obstacle to their reporting to child protection services; and to encourage “any person who knows about or suspects, in good faith, sexual exploitation or sexual abuse of children to report these facts to the competent services” (art. 12, paras. 1 and 2).

65. The authors of the present report consider that rules that protect the identity of professionals and private individuals who, in good faith, bring cases of violence against children to the attention of the competent authorities should be enacted into law, with respect to all forms of violence against children.

#### 4. Interdisciplinary teams

66. In a growing number of countries, interdisciplinary teams respond to complaints and reports of violence against children. They help maintain the credibility and reliability of the child’s testimony, while securing children’s well-being and safety throughout the case. They limit the number of interviews the child may be subject to, and the risks that may be associated with this process. Some good practices are described here.

67. The Thuthuzela Care Centres (TCCs) were introduced as part of a strategy by South Africa to address sexual violence against women and children. A TCC is a one-stop shop where victims are provided with comprehensive services such as counselling, interviews, medical examination, court preparation and investigation in a holistic, integrated and victim-friendly manner. Through ongoing coordination with relevant stakeholders, including police, health-care professionals, prosecutors, social workers and NGOs, the ultimate goal of the TCC is to address the social and medical needs of the victim, reduce secondary victimization, improve conviction rates and reduce the lead time for the finalization of cases. The Thuthuzela Information Management System enables TCCs to become proactive, to test emerging models for efficiency and effectiveness, to develop corrective and rehabilitative offender programmes and to strive for integration rather than only punishment.

68. In Iceland and Sweden, *Barnahus* (“Children’s Houses”) have been established to provide children with assistance while also obtaining evidence that can be used in legal proceedings. Interviews with child victims of violence are held in a child-friendly environment, avoiding multiple interviews, enhancing the value of the evidence obtained and providing therapy and support. The model was adapted from the United States, where some 600 Children’s Advocacy Centers exist. With specially trained psychologists and social workers, the centres operate under a board composed of representatives of the relevant agencies, including the police, local hospital and social work authority. A 2008 evaluation of Swedish *Barnahus* found that “the position of the child in the legal process was bolstered and the child’s perspective is considered in a higher degree than before. An increasing number of interviews and medical examinations took place and the children have been given better treatment and care in the acute crisis.”<sup>45</sup>

69. Recognizing the invisibility of cases of violence and sexual violence against children, and the critical difficulties faced by victims in accessing justice, the Supreme Court of Argentina established in 2008 an Office of Domestic Violence. The Office operates 24 hours per day, 365 days per year. Cases reported, including 28 per cent by children, involved incidents of physical violence (67 per cent), sexual violence (13 per cent) and psychological violence (90 per cent). Children are received in a child-friendly room,

<sup>45</sup> *Child Rights in the Union* (note 7 above), citing K. Åström and A. Rejmer, p. 127.

and interviews are videotaped and conducted by a multidisciplinary team. Cases may be referred to criminal or civil authorities and/or to public health services. The establishment of the Office has drastically reduced delays in the consideration of these cases.

## 5. Civil society and community-based mechanisms

70. Civil society and community-based organizations, including NGOs, professional associations, religious groups, foundations and the private sector, often play a pivotal role in helping children access counselling and complaints systems, and in developing effective mechanisms for reporting violence against children.

71. For example, the Philippine Mental Health Association is a professional association with a significant role in assisting child victims of violence, and in prevention and awareness-raising. Through the Youth Life Enrichment Program it organizes workshops to teach life skills to young people, leading to the establishment of over 90 mental-health clubs in secondary schools throughout the country, whose members are trained in peer counselling.<sup>46</sup>

72. In Ethiopia, the African Network for the Prevention and Protection against Child Abuse and Neglect provides counselling and support to children in police stations.<sup>47</sup> In Chad, student committees and parent-teacher associations participate in the identification and response to child protection concerns. In case of repeated child absence from school or signs of abuse or neglect, home visits are promoted to monitor the child's situation. Such committees facilitate the identification of children at risk, who can then be referred to appropriate actors.

73. The Dar el Aman ("house of security") child protection centre in Jordan provides therapy and protection to children who have experienced physical, sexual and/or psychological abuse. Some are referred by courts and others seek help through a hotline. Similar centres have been established in other countries in the region.<sup>48</sup>

74. In Pakistan, Lawyers for Human Rights and Legal Aid established a centre (Madadgaar) that provides shelter, medical and psychological counselling and legal services to child victims of violence. The Society for the Protection of the Rights of the Child established Child Rights Committees at the district level, staffed by professional social workers who provide counselling and assist victims to make complaints to the competent authorities. The Pakistan Pediatric Association, together with Pakistani NGOs, participates in the implementation of the National Plan of Action against Child Sexual Abuse and Exploitation.

75. An inter-agency study was undertaken regarding global evidence on community-based child-protection groups and their impact. It found that community-based child-protection groups played a role in raising awareness about risks to children's protection and well-being; in mobilizing communities to respond to and prevent those risks, helping to develop local solutions to problems and referring difficult cases; and in organizing psychosocial support for children. Illustrating the importance of partnership with public services, most groups networked with elements in the formal child protection system, such

<sup>46</sup> K.M. Hong et al., "Systems of care in Asia", in *Facilitating Pathways: Care, Treatment and Prevention in Child and Adolescent Mental Health*, Remschmidt, Belfer and Goodyear, eds. (Heidelberg and New York, Springer, 2004), p. 64.

<sup>47</sup> *Handbook for Professionals and Policymakers on Justice in Matters involving Child Victims and Witnesses of Crime* (United Nations publication, Sales No. E.10.IV.1), p. 52.

<sup>48</sup> D. Gavlak, "Child maltreatment comes out of the shadows", *Bulletin of the World Health Organization*, vol. 87, No.5 (May 2009), pp. 325-404.

as police, magistrates, district- and national-level committees, and social services and education officials. Many also networked with elements in non-formal systems, such as traditional justice mechanisms.<sup>49</sup>

76. Lessons identified in other studies include the need to secure the sustainability of these efforts by encouraging community “ownership”, and to avoid interventions that may inadvertently stigmatize victims. Cooperation between community-based organizations and governmental agencies, in the form of training, clear definition of roles, coaching, case review and monitoring, can help reduce the risk of inappropriate interventions. Community-based organizations can help monitor complaint mechanisms, to ensure that they are child-sensitive and effective. The participation of children themselves can help ensure that services, in particular outreach to make victims aware of complaints mechanisms and services, are more effective.<sup>50</sup>

77. The cooperation of civil society with government can take many forms. One important lesson is that community-based child protection groups should act in association with the national child protection system where it exists, rather than become a parallel structure.

## 6. Child helplines

78. Dedicated telephone numbers that can be called anonymously and at no cost to seek advice about incidents of violence have been established in many countries throughout the world. Helplines can be used by victims, by other persons who know of or suspect violence, and even by persons who commit violence and wish to seek help.

79. Some are specialized in specific types of violence (for example sexual violence, domestic violence, or all violence against children), while others deal with a wide range of concerns. Some are provided by NGOs and others by governmental agencies.<sup>51</sup>

80. Some helplines convey information and advice about where to turn and what the authorities can do. Others provide informal emergency psychological support. Still others can forward information transmitted by the caller to those responsible for taking action.

81. Services are starting to use new technologies, such as the Internet or text messages (SMS). In Switzerland, for example, each day some 400 children are given advice by SMS and some 1,000 receive on-line advice.<sup>52</sup> In 2010, Austria, Germany and Switzerland opened an Internet service allowing the public to report suspected cases of sexual exploitation of children in tourism.<sup>53</sup> Canada has a website for reporting Internet child pornography.<sup>54</sup>

82. According to Child Helpline International, representing helplines from over 100 countries, violence is one of the main reasons for which children contact helplines. In its 2010 International Report on Violence against Children, the organization recorded more

<sup>49</sup> Inter-agency Reference Group, *What Are We Learning about Protecting Children in The Community? An Inter-agency Review of Evidence on Community-based Child Protection Mechanisms* (London, Save the Children, 2009).

<sup>50</sup> E. Jareg, *Listening, Learning, Acting: Preventing and Responding to Violence against Children in Homes and Communities* (Kathmandu, Save the Children, 2008), chaps. 4-5.

<sup>51</sup> For example, in Mauritius, the hotlines are provided by the police and the Ministry of Gender Equality, Child Development and Family Welfare, while in Switzerland they are provided by the foundation Pro Juventute.

<sup>52</sup> Government of Switzerland.

<sup>53</sup> Government of Austria. The service is based on a tool developed by the NGO ECPAT International.

<sup>54</sup> Government of Canada.

than 250,000 incidents of violence and abuse amongst the 62 helplines contributing to its survey. Most reports concerned children aged 10-15 years old, in particular girls. Physical abuse and bullying are most reported on, followed by neglect, sexual abuse and emotional violence.

83. The authors of the present report recognize that while the primary responsibility for child protection lies with national Governments, child helplines represent a unique opportunity to support government action. These should be identified as a core component of comprehensive, robust and integrated national child protection systems, as a much needed resource for children, as a generator of data and information, and also as a referral system for children in need of advice and assistance.

## **7. Reaching the most vulnerable**

84. An important area for partnership between civil society and governments concerns the provision of safe mechanisms for particularly vulnerable children, who are often hard to reach through government services. Marginalized children include those lacking parental care, those placed in institutional settings or in detention, those living and working in the streets, those with disabilities, those in extreme poverty, those trapped in child labour, or those on the move, including as migrants or asylum-seekers, as well as children in situations of armed conflict.

85. Incidents of violence, including sexual violence, are exacerbated in conflict situations by a general security vacuum and the lack of administrative, law-enforcement and judicial infrastructures, among other factors. As noted by the Special Representative on Sexual Violence in Conflict, “sexual violence in conflict is a political, security and human rights issue that demands a political, security and human rights response”.<sup>55</sup>

86. Rape and other sexual violence against children are under scrutiny by the Security Council monitoring and reporting mechanism on children and armed conflict. According to reports of the Special Representative of the Secretary-General for Children and Armed Conflict, children are particularly vulnerable to sexual violence in and around refugee and internally displaced population settings, and when associated with armed forces and groups.<sup>56</sup> Girls remain the main victims of sexual violence in armed conflict, but there are increasing reports of sexual abuse against boys. Collecting data and reporting on sexual violence against children in armed conflict remains a significant challenge. As noted by the Special Representative: “these acts are considered in many contexts as strong taboos, and as such survivors and communities are not encouraged to speak out. The lack of trust in the judicial process and the fear of reprisals accentuate the culture of silence.”<sup>57</sup>

87. Children in extreme poverty may not only be hard to reach due to geographic remoteness or social exclusion, but also often suffer from a deep lack of self-esteem. Victims of bullying, humiliation and abuse, they feel powerless to speak up, and fear not being believed when reporting incidents of violence, or being blamed for having caused them in the first place.

88. Once in the streets, children become highly vulnerable to violence and exploitation. Many have run away due to psychological, physical or sexual abuse suffered in the home, while others have remained in contact with their families and work in the streets in order to supplement the family income.

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<sup>55</sup> General briefing to the Human Rights Council, on 10 February 2011. Available from [www.stoprapenow.org/uploads/whatsnews/humanrightscouncilstatement.pdf](http://www.stoprapenow.org/uploads/whatsnews/humanrightscouncilstatement.pdf).

<sup>56</sup> A/64/254 and A/65/219.

<sup>57</sup> A/65/219, para. 23.

89. The placement of children in institutions remains high in many countries. Institutions are often not registered, norms and standards regulating their activities are frequently lacking, and monitoring systems remain weak and dispersed. These cumulative factors compromise children's access to safe complaint and reporting mechanisms.

90. Research data is limited, but some evidence indicates that children with disabilities may be up to five times more likely to experience physical, psychological, or sexual violence,<sup>58</sup> less likely to be addressed by prevention programmes or to attract targeted protection services, and less able to challenge or protect themselves from incidents of violence. This explains, inter alia, the special barriers in accessing justice and being accepted as credible witnesses, and the pervasive impunity of abusers. The universal ratification of the Convention on the Rights of Persons with Disabilities will be an essential step to secure the protection of these children from violence.

91. Children on the move, including children who migrate, who are refugees or asylum-seekers are also at special risk of enduring violence without benefiting from counselling or having access to reporting or complaint mechanisms. According to the World Bank, approximately one third of migrants from developing countries are between the ages of 12 and 24.<sup>59</sup> At times on their own, unable to speak the language and lacking information about existing child protection services, they are often afraid of approaching the authorities and of being deported, especially when undocumented. As a result, they may place themselves at further risk of violence and exploitation.

92. The authors of the present report recognize the urgency of rendering counselling, reporting and complaint mechanisms accessible, effective and sensitive to vulnerable children and their families. Thus, cooperation with non-governmental and community-based organizations may offer a solid basis for effective action.

### **C. The role of national independent human rights institutions for children**

93. National independent human rights institutions for children play a critical role in the promotion and protection of children's freedom from violence. The Committee on the Rights of the Child consistently recommends the establishment of these institutions, including powers to consider individual complaints and carry out investigations, and secure effective remedies for breaches of children's rights.<sup>60</sup>

94. There are some 122 statutory national human rights commissions throughout the world, some with a distinct mandate on the rights of the child.<sup>61</sup>

#### **1. Mandate**

95. Independent human rights institutions for children (IHRICs) have a comprehensive child rights mandate, conducting research and awareness-raising campaigns, promoting law and policy reforms, and assisting child victims. Those with a mandate to receive individual complaints address violence against children committed by professionals working with children, including teachers, staff of children's homes, police officers and other public servants. These mechanisms are non-adversarial, based on dialogue and mediation, and seek to find negotiated solutions guided by the child's best interests. Currently, only some

<sup>58</sup> Committee on the Rights of the Child, general comment No. 9, para. 42.

<sup>59</sup> World Bank, *World Development Report 2007: Development and the Next Generation* (Washington D.C., 2006), p. 14.

<sup>60</sup> General comment No. 2 (2002), para. 13.

<sup>61</sup> National Human Rights Institution Forum, [www.nhri.net](http://www.nhri.net), accessed on 16 November 2010.

IHRICs have the power to consider individual complaints and petitions and carry out investigations, including those submitted on behalf of or directly by children.

96. Several IHRICs can take cases to court or alert the prosecutor, in particular when a child is in danger and an urgent judicial decision is needed.

## **2. Accessibility**

97. Compared with the judicial system, IHRICs are generally more accessible as their complaint system is free of charge, does not require a lawyer, and is less formal and simpler to use. Accessibility is enhanced through local offices for the identification and transmission of cases. Some IHRICs proactively reach out to children, including by visiting schools, detention and care centres and other places where children spend time, including in remote areas. Most IHRICs can carry out investigations on their own initiative. Confidentiality is a critical element of this process.

98. To ensure child-sensitive approaches and easily communicate with children, IHRICs promote child-friendly premises, in-service training and the use of new technologies, including websites and social media. Some offices have complaint forms online and host online forums for children.

99. Involving children in the work of these institutions has led to major breakthroughs. In some cases, a “Youth Advisory Panel”<sup>62</sup> or elected student representatives<sup>63</sup> help familiarize their peers and classmates with their work and make complaints procedures more accessible.

100. In some instances, the law provides that the IHRIC can only handle a complaint filed by a child once permission from a parent or legal guardian is granted.<sup>64</sup> However, in cases where parents or legal guardians may be the source of abuse, children are allowed to choose an adult they trust. In other countries, the child’s permission needs to be sought to pursue a complaint filed on his or her behalf.

## **3. Effectiveness**

101. Strong investigative powers are vital to the effectiveness of IHRICs and their ability to respond to complaints. These include the power to compel witnesses to testify and request evidence. To be effective, these need to be included in relevant legislation and be enforceable by tribunals in case of non-compliance. In several countries, IHRICs were created with a view to improving the ability of the child protection system to monitor and respond to cases of child abuse.<sup>65</sup>

102. When handling a child rights complaint, time is of the essence. The limited formalities involved in addressing complaints mean that they can be processed faster. The status of the independent institution in the country and institutional collaboration with high-level decision-making bodies facilitate rapid solutions to urgent cases.

103. IHRICs have a critical mandate anchored in the Convention on the Rights of the Child and guided by the child’s best interests. But they require adequate resources, institutional cooperation with other actors and independence in the performance of their mandate. Their effectiveness is also deeply dependent on the level of trust they generate among young people.

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<sup>62</sup> For example in Ireland, Wales and New Zealand.

<sup>63</sup> For example in France.

<sup>64</sup> For example in Ireland.

<sup>65</sup> This is particularly the case in North America, Australia and New Zealand.

### **III. Conclusions and recommendations**

#### **A. Conclusions**

104. Important international and regional human rights standards provide a sound framework for the development of strong, safe and effective counselling, reporting and complaint mechanisms to address incidents of violence against children. As agreed upon at the Third World Congress against Sexual Exploitation of Children and Adolescents, these mechanisms should be set up in all countries by 2013.

105. At the national level, significant efforts have been undertaken, both by Governments, which have the leading responsibility for child protection, and by other key stakeholders, including independent human rights institutions for children, civil society and community-based organizations. Yet, these efforts remain fragmented and insufficient to secure children's protection from violence. Urgent steps are needed to establish and strengthen these mechanisms in conformity with relevant international human rights instruments and political commitments undertaken by States in this area. These measures are critical to develop robust child protection systems in which violence is effectively addressed, and children's dignity and fundamental rights are respected.

106. As confirmed by the analysis conducted for the present report, too often, available mechanisms lack a basis in law and have no clear definition of their mandate, role and responsibilities. National plans of action on children, or specifically on violence against children, address these mechanisms in a sporadic manner and lack the necessary resources to ensure their timely and effective intervention. Evaluation of these mechanisms is rare, and so is the assessment of the effectiveness of follow-up measures, or of the impact on children of decisions taken in response to violence.

#### **B. Guiding principles**

107. It is urgent to develop effective, child-sensitive counselling, reporting and complaint mechanisms, universally available to and accessible by all children, without discrimination of any kind.

108. These mechanisms are a core component of the national child protection system, and should be anchored in child-rights laws and policies, supported by integrated services for children, and pursued with initiatives to change social norms, attitudes, behaviours and practices that condone violence. It is critical to address the root causes of tolerance of violence against children, reasons for underreporting, and barriers for accessing available services.

109. Children need to feel empowered, to obtain the required information about their rights to access and to make effective use of these mechanisms; they need to feel reassured that they will be listened to in an ethical, safe and confidential manner, that their testimonies will not be disclosed or misused, and that their protection will not be put at risk. Children's participation in these efforts should be secured, including in the design and development of these mechanisms.

110. Counselling, complaint and reporting mechanisms should, at a minimum:

(a) Be established by law and in conformity with international human rights instruments, with clearly defined roles and responsibilities for governmental departments, and well-defined standards for the actions of other institutions, services and facilities responsible for the care or protection of children;

- (b) Be made widely available and well-publicized through appropriate and active means to children and adults, including those acting on children's behalf;
- (c) Be accessible to all children under the jurisdiction of the State, without discrimination of any kind, while being age appropriate and gender sensitive, and granting special protection to children at risk;
- (d) Be guided by the best interests of the child and informed by children's experience and perspectives;
- (e) Guarantee the safety of children, through, inter alia, measures to avoid any risk of harm, intimidation, reprisals or revictimization;
- (f) Ensure the confidentiality of proceedings and respect children's right to privacy;
- (g) Provide prompt and speedy response and follow-up, to, inter alia, avoid adverse consequences to those concerned.

### C. Recommendations

111. Where mechanisms do not exist, States should establish by law, and promote and implement safe, child-sensitive counselling, complaint and reporting mechanisms in compliance with the guiding principles and requirements mentioned above, as a core dimension of a well-functioning and well-resourced national child protection system, which is universally available to and accessible by all children without discrimination of any kind. Such mechanisms should be grounded in a solid legal framework framed by international standards, prohibiting all forms of violence against children, and safeguarding the rights of child victims and witnesses, and should be provided with the necessary financial means and well-trained human resources to act in a timely, ethical, child-sensitive and effective manner.

112. Where mechanisms exist, it is critical to secure their availability to and accessibility by all children, without discrimination, and to ensure that they act in an ethical, effective and child-sensitive manner and pursue the best interests of the child at all times. To this end:

(a) Laws, policies and guidelines should be developed in conformity with international human rights standards, and clearly define the roles and responsibilities of relevant bodies, institutions and professionals involved with counselling, reporting and complaint services for children affected by violence; the rights and legal safeguards of child victims and witnesses should be clearly spelled out, including with a view to avoiding any risk of revictimization through harassment or reprisals. Those working with children should have clear guidance on reporting requirements and consequences. Mandatory reporting responsibilities should be defined with respect for children's rights, including to confidentiality and privacy; standards establishing an obligation to report violence should be incorporated into regulations or rules of conduct of all institutions and agencies that deal with children at risk of violence. Mandatory reporting by professionals who work with children of sexual abuse and other acts of violence causing physical injury and psychological violence should be given due consideration by all countries. Rules that protect the identity of professionals and private individuals who bring cases of violence against children to the attention of the competent authorities should also be enacted into law;

(b) An institutional, coordinated and integrated response should be pursued across relevant sectors, including justice, law enforcement, social welfare, education and health. This effort should be supported by: (i) initiatives to enhance staff capacity

in child-sensitive case management; (ii) putting in place an effective system of referral of complaints to appropriate authorities, with obligations to investigate where a child may be at risk, and enabling relevant authorities to intervene to protect children in danger; and (iii) child-sensitive judicial proceedings;

(c) National human rights institutions should be established in all countries by 2013 to safeguard children's freedom from violence; they should provide for, *inter alia*, child-sensitive counselling, reporting and complaint mechanisms; independent monitoring of measures to address violence; and effective remedies and redress, including the possibility of seeking advice and filing complaints before these institutions;

(d) Capacity-building and training initiatives should be developed to ensure that those working with and for children have the necessary knowledge and skills, and abide by child rights principles and ethical standards when providing children with counselling when interviewing or supporting them in reporting and complaint proceedings or in relevant recovery and reintegration programmes. These efforts should promote a collaborative and integrated approach among relevant professionals, including in the medical, legal, social and educational areas. Where not available, mental health systems for children and adolescents should be developed;

(e) Awareness-raising efforts should be promoted to inform children and their families about children's rights, and information on effective remedies to address incidents of violence and on available services for assistance and support should be well publicized. Information should be made available on where to benefit from confidential advice, and on how and where to report incidents and lodge complaints. Information and services that are age- and language-appropriate and gender- and disability-sensitive should be put in place to enable access and ensure support to all children without discrimination of any kind;

(f) Safety and confidentiality should be safeguarded to protect children and their representatives from any risk of reprisal when complaints are lodged or incidents of violence reported, and to ensure that all actions are carried out in the best interest of the child and with children's involvement and informed consent. Children must be confident that no information will be shared without their consent and their confidentiality will not be breached, unless there is a well-founded belief that doing so would be necessary to protect them or others from serious harm;

(g) Access by children and those acting on their behalf to international and regional mechanisms should be supported when domestic legal remedies fail to protect children; the drafting of the new optional protocol to the Convention on the Rights of the Child on the establishment of a communications procedure provides an essential avenue for addressing incidents of violence through safe and child-sensitive proceedings;

(h) Data and research should be strengthened to overcome the invisibility of violence and the persistent lack of information on the outcome of violence-related cases and to evaluate the impact of relevant initiatives on the children concerned. Children's views and experience should inform this process;

(i) Monitoring and evaluation should be strengthened, including for ensuring respect for high professional and ethical standards, and enhancing the effectiveness and positive impact of those mechanisms. With this aim, confidential exit interviews should allow to collect views and comments of children who have used these mechanisms. Hearing these views and responding to them in the development of mechanisms and services is an essential way to move towards greater child sensitivity.

## Annex

### **Overview of international and regional standards and commitments concerning child-sensitive counselling, reporting and complaint mechanisms to address incidents of violence against children, including sexual violence and exploitation**

#### **1. International standards**

1. Important international standards frame the development of counselling, reporting and complaint mechanisms. These include the Convention on the Rights of the Child and its Optional Protocols, and significant regional human rights instruments.

2. The Convention on the Rights of the Child recognizes the right to freedom from violence in its many forms and promotes a comprehensive system of child protection to address this phenomenon; it calls on violence prevention, on victims' identification, treatment, recovery and reintegration, as well as on the referral and investigation of incidents of violence. Several articles of the Convention on the Rights of the Child address children's protection from violence, particularly articles 19, 24, 28, 34 to 36, 37 and 39.

3. The normative foundation provided by the Convention and its Protocols has generated significant legal reforms in countries in all regions aiming at the legal prohibition of all forms of violence against children, in any setting where violence may occur. Legislation is also needed to recognize children's right to complaint procedures and remedies to address breaches of their rights and to support children's access to courts and independent children's rights institutions, such as an Ombudsman or a person of a comparable status. Children should know who these persons are, how to access them and what can be expected from this process.<sup>66</sup>

4. This is an area addressed by core international human rights standards and to which the Committee on the Rights of the Child has devoted continued attention. In its most recent General Comment on The Right of the Child to Freedom from all Forms of Violence<sup>67</sup>, the Committee included importance guidance on these mechanisms, strongly recommending that "all States develop safe, well-publicized, confidential and accessible support mechanisms for children, their representatives and others to report violence against children, including through the use of 24-hour toll free hotlines and other information and communication technologies. The establishment of reporting mechanisms includes: providing appropriate information to facilitate the making of complaints; participation in investigations and court proceedings; developing protocols which are appropriate for different circumstances and made widely known to children and the general public; establishing support services for children and families; and training and providing on-going support for personnel to receive and advance the information received through reporting systems. Reporting mechanisms must be coupled with, and should present themselves as, help-oriented services offering public health and social support rather than as triggering responses which are primarily punitive. The children's right to be heard and to have their views taken seriously has to be respected. In every country reporting of instances, suspicion

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<sup>66</sup> General Comment 12, CRC/L/GC/12.

<sup>67</sup> General Comment 13 adopted in February 2011.

or risk of violence should, at a minimum, be required by professionals working directly with children. When reports are made in good faith, processes must be in place to ensure the protection of the professional making the report.”

5. Previously, the Committee had highlighted that<sup>68</sup> states need to ensure that there are effective, child sensitive procedures available to children and their representatives, including the provision of child friendly information, advice, advocacy and access to independent complaints procedures and to the courts with the appropriate legal and other assistance; and national human rights independent institutions should ensure that children have effective remedies for the breaches of their rights, including independent advice, advocacy and complaints procedures<sup>69</sup>.

6. Where rights are found to have been breached, there should be appropriate reparation, including compensation and, where needed, measures to promote physical and psychological recovery, rehabilitation and reintegration.

7. When incidents of violence take place, the Convention calls for “the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement<sup>70</sup>”. The Convention further calls for measures designed to “promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts<sup>71</sup>.” “Such recovery and reintegration”, it adds, “shall take place in an environment which fosters the health, self-respect and dignity of the child.”

8. **The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography**, in force in 142 States<sup>72</sup>, requires States Parties to adapt legal and investigative procedures to the special needs of child victims, including their needs as witnesses, to provide support services, inform them of their rights, their role and the scope, timing and progress of the proceedings, avoid unnecessary delay, allow their views, needs and concerns to be presented and considered, protect their privacy and protect them against intimidation and retaliation.<sup>73</sup> It also underscores that the best interest of the child shall be a primary consideration in the treatment of victims in the criminal justice system, and that the persons who work with victims shall receive appropriate training.<sup>74</sup>

9. Article 6 of the **Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict** provides that each State Party shall take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the protocol.

10. International criminal law also establishes important safeguards in this field. Indeed, according to the Rome Statute, the **International Criminal Court** is required to take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses; and, to secure their protection, it may conduct

<sup>68</sup> CRC/GC/2003/5, paragraph 24

<sup>69</sup> General comment 2, paragraph 13

<sup>70</sup> Article 19 paragraph 2

<sup>71</sup> Article 39

<sup>72</sup> As of January 2011

<sup>73</sup> Art.8(1)

<sup>74</sup> Art.8(3) and (4)

proceedings in camera or allow the presentation of evidence by electronic or other special means; “these measures shall be implemented in the case of a victim of sexual violence or a child who is a victim or a witness<sup>75</sup>”. The Rome Statute also foresees the establishment of a Victims and Witnesses Unit within the Registry to provide protective measures and security arrangements, counselling and other appropriate assistance. The Unit “shall include staff with expertise in trauma, including trauma related to crimes of sexual violence<sup>76, 77</sup>”.

## 2. Regional standards

11. Significant regional instruments also address this area of concern. The Inter-American **Convention on the Prevention, Punishment and Eradication of Violence against Women**, also covering the situation of girls under the age of majority<sup>78</sup>, calls for fair and effective legal procedures for victims including “protective measures, a timely hearing and effective access to such procedures” (...) “effective access to restitution, reparations or other just and effective remedies”, and specialized services, including shelters [and] counselling services...<sup>79</sup>. The Convention applies to physical, sexual and psychological violence, although not to violence against boys, and is in force in all OAS Member States except two.<sup>80</sup>

12. **The African Charter on the Rights and Welfare of the Child** mirrors many of the protective principles of the Convention on the Rights of the Child, including the need for legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment, from physical or mental injury or abuse, neglect or maltreatment including sexual abuse; and from sexual exploitation. Protective measures include the establishment of special monitoring units to provide necessary support for the child and for those who have the care of the child, as well as other forms of prevention and for identification, reporting referral investigation, treatment, and follow-up of instances of child abuse and neglect.

13. **The Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa** presents important provisions for the protection of girls from violence and calls, inter alia, for the establishment of mechanisms and accessible services for effective information, rehabilitation and reparation of victims of violence; for States’ support to initiatives directed at providing women with access to legal services, including legal aid; and requires the provision of appropriate remedies to be “determined by competent judicial, administrative or legislative authorities, or any other competent authority provided for by law<sup>81</sup>”.

14. **The Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse** adopted by the Council of Europe in 2007 requires Parties to take “measures to assist victims, in the short and long term, in their physical and psychosocial recovery”<sup>82</sup> and to “adopt a protective approach towards victims, ensuring that the investigations and criminal proceedings do not aggravate the trauma experienced by the child and that the

<sup>75</sup> Article 68

<sup>76</sup> Article 43 paragraph 6

<sup>77</sup> Also relevant are the Rules of Procedure and Evidence adopted by the Assembly of States Parties of the Statute of the International Criminal Court and the Regulations of the Office of the Prosecutor

<sup>78</sup> Arts.2 and 9

<sup>79</sup> Art.7(f), 7(g) and 8(d)

<sup>80</sup> As at 15 January 2011 (Canada and the United States have not yet ratified).

<sup>81</sup> See in particular articles 1 j), 8 and 25

<sup>82</sup> Art. 14(1)

criminal justice response is followed by assistance, where appropriate<sup>83</sup>. Article 31 establishes a comprehensive set of safeguards for the protection of the rights of victims and witnesses, including on their safety, protection from intimidation and re-victimization, rehabilitation, and the provision of age-sensitive information. Article 35 contains standards regarding interviews with child victims, which should take place without unjustified delay, by professionals trained for this purpose and conducted in an environment and in manner sensitive to the rights and vulnerability of the child<sup>84</sup>. This Convention also indicates that norms concerning the confidentiality of information obtained in the course of professional activities should not prevent their reporting of situations where they have reasonable grounds for believing that the child is a victim of sexual abuse or exploitation and it encourages the establishment of telephone or internet helplines to provide confidential advice.<sup>85</sup> At present, it is in force for 10 of the 47 Member States of the Council of Europe, and is also opened to the accession by non-member States.<sup>86</sup>

15. The 2005 **Economic and Social Council Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime** (“UN Guidelines”), provide a comprehensive set of standards of strong relevance for the protection of children affected by violence. Sections V to XIV contain significant guidance on the right to be treated with dignity and compassion; to be protected from discrimination; to be informed, to be heard and to express views and concerns; the right to effective assistance, to privacy, to be protected from hardship during the justice process; the right to safety, to reparation and to special preventive measures.

16. At the regional level, the **Council of Europe Guidelines on Child Friendly Justice**<sup>87</sup>, adopted in November 2010, recognize the right to a speedy, age sensitive, diligent justice system that respects children’s rights and children’s protection from harm, intimidation, reprisals and secondary victimization; the Guidelines also highlight the right to “appropriate ways to access justice” and to “appropriate independent and effective complaints mechanisms.”<sup>88</sup>

### 3. International commitments to children

17. The participants at the **World Congress III against Sexual Exploitation of Children and Adolescents** agreed upon important commitments in this area, having called on States to:

(a) establish by 2013 an effective and accessible system for reporting, follow up and support for child victims of suspected or actual incidents of sexual exploitation, for example by instituting mandatory reporting for people in positions of responsibility for the welfare of children;

(b) develop or enhance accessibility of existing telephone or web-based help lines, in particular for children in care and justice institutions, to encourage children and require care givers to confidentially report sexual exploitation and seek referral to appropriate services, and ensure that the operators of such reporting mechanisms are adequately trained and supervised;

<sup>83</sup> Art.30

<sup>84</sup> In addition, Art.36(2)(b) requires States Parties to ensure that “victims may be heard in the courtroom without being present, notably through the use of appropriate communication technologies.”

<sup>85</sup> Arts.12 and 13

<sup>86</sup> As at 15 January 2011.

<sup>87</sup> Adopted on 17 November 2010 by the Committee of Ministers of the Council of Europe

<sup>88</sup> III.A.1 and III.E.3

(c) establish or strengthen national child protection services in order to provide all child victims of sexual exploitation, without discrimination, with the necessary economic and psychosocial support for their full physical and psychological recovery and social reintegration;

(d) ensure that these services are accessible, appropriately resourced, comprehensive, child- and gender-sensitive, and reach all children without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, and social origin and including children with disabilities, from ethnic minorities, indigenous or Aboriginal children, refugee or asylum-seeking and children in domestic service or living on the streets and children displaced by conflict or emergency situations.<sup>89</sup>

18. The establishment of violence related child sensitive mechanisms is gaining an increasing relevance as part of the process of follow-up to the UN Study on Violence against Children across regions. In the case of South Asia, for instance, governments in the region formed the **South Asia Initiative to Eliminate Violence against Children (SAIEVAC)** which adopted a strategic plan for 2010-15 with two specific goals addressing this question:

(a) By 2015 all States have ensured that all professionals working with or for children (including those working for the State) who suspect that acts of violence have been committed against a child are required by law to report the crime (...) Reporting systems should be safe, well publicized, confidential, accessible and child friendly, allowing children, their representatives and others to report violence against children.

(b) By 2015 all States have clearly defined procedures for the referral of child victims of violence and the modalities for inter-agency cooperation (that is between social services, education, health, police, prosecution authorities, voluntary and private agencies) following an assessment of each particular victim, given due weight to his/her views, and when it is in the best interests of the child, also to her/his parents' or guardians' views.

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<sup>89</sup> Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents, paras. 46-49.