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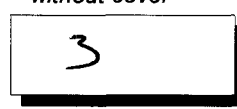
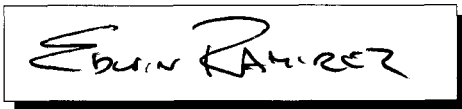
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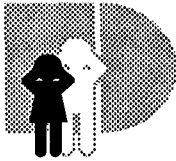
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DCI/UNICEF Briefing Kit
THIRD EDITION — MAY 1989



The future United Nations Convention on the Rights of the Child

Document No. 3

The future Convention: How it improves children's rights

■ A convention for all children

The Convention on the Rights of the Child is special because, for the first time in international law, children's rights are set out in a treaty which will be binding for those States that ratify it.

Under the Convention, children have their own rights, and are supposed to be active in exercising them in accordance with their growth and evolving capacities.

The Convention contains a number of general provisions aimed at securing the rights of all children in matters of importance to their fundamental needs and interests. In addition, it gives protection to children in specially difficult situations.

The Convention applies to all persons below the age of 18 unless, according to national law, they have attained majority at an earlier age (art. 1).

The provisions of the Convention are based on the principle of non-discrimination. They apply to all children regardless of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status (art. 2).

The Convention gives the child the right to a name and a nationality (art. 7) and states that every child has the inherent right to life (art. 6). States Parties shall ensure the survival and development of the child. Articles 24 and 27 give provisions for securing the right to the highest attainable standard of health and a standard of living adequate for the child's development. Article 26 recognizes the right of the child to benefit from social security.

■ In the child's best interests...

According to article 3, the best interests of the child shall be a primary consideration in all actions concerning children. In connection with the various provisions of the Convention, the best interests of the child are referred to or further specified by reference to his or her family ties, continuity in the upbringing, and the child's ethnic, religious, cultural and linguistic background (e.g. articles 9, 17, 18, 20, 21, 40).

All children are entitled to the right of parental care and not to be separated from their parents (art. 9), and all applications for family reunification are to be dealt with in a positive, humane, and expeditious manner (art. 10).

If a child is temporarily or permanently deprived of his or her family environment, he or she is entitled to special protection and assistance provided by the State, and alternative care is to be ensured (art. 20). When searching for appropriate alternative care, due attention is to be paid to giving the child an environment as similar as possible to that in which he or she has previously been living. Intercountry adoption should be regarded as a last resort, and adoption of any kind should be undertaken in strict conformity with rules set out by the competent

authorities (art. 21). The Convention also applies to children in situations of armed conflict (art. 38), and refugee children (art. 22).

In the text of the Convention, there are several provisions to protect children from all kinds of exploitation, especially sexual and economic exploitation (articles 32-36) as well as guidelines for recovery and reintegration in cases where children have actually been the victims of cruelty or exploitation (art. 39).

A number of provisions deal with the right to education and the objectives of education (articles 28 and 29). At the same time, the Convention also makes it clear that children have a right to leisure and recreation (art. 31).

Children deprived of their liberty or who are in conflict with the law are given special attention in articles 37 and 40; the former also prohibits torture, life imprisonment or execution of children.

The implementation machinery of the Convention (articles 42-45) is designed to give special emphasis to creating a setting for global cooperation and development in the realization of the provisions and ideals of the Convention.

Among this vast array of provisions are many that constitute a significant upgrading of international norms applicable to children to date, as well as a number of interesting innovations in substance and approach. Several had their roots in the proposals put forward by the NGO Ad Hoc Group and UNICEF, and many were the result of government initiatives. The following are among the most notable improvements and additions to existing standards in this sphere.

The best interests of the child (art. 3): This article is fundamental to the whole Convention in that it stipulates that the child's best interests must be a "primary consideration" in all actions concerning children. Whilst the term "best interests" leaves room for interpretation, its inclusion as the guiding principle marks an important step forward in terms of the approach to be taken — to children as a group as well as in individual cases — when determining the most appropriate solutions to situations in which they find themselves.

Survival and development (art. 6): The State's obligation to do everything possible to ensure child survival is a concept that has never before been recognised in international human rights law. It reflects the fact that special measures are required to prevent child mortality and disablement due to disease and malnutrition.

Preservation of Identity (art. 8): This is another totally new obligation. Here the Convention underscores the child's right to name and nationality by the careful protection of the child's identity. The Working Group included this provision at the suggestion of one government in the light of mass "disappearances" of children whose identity papers had been deliberately falsified and family ties arbitrarily severed. The provision is intended to prevent the recurrence of this phenomenon anywhere in the world.

The child's opinion (art. 12): The right of the child not only to express an opinion but also to have that opinion taken into account in matters that affect him or her is a highly significant recognition of the need to give children a greater say in their own lives.

Child abuse and neglect (art. 19): The feature of special interest in this article is the emphasis placed on the prevention of intra-familial abuse and neglect, which has never previously figured in a binding instrument.

Adoption (art. 21): This article is of special importance because of the emphasis it places on the need for strong safeguards surrounding the adoption process — especially as regards inter-country adoption —

■ Fourteen examples of improved rights

■ From survival to adoption...

■ ...health to education...

and the fact that it brings into this binding instrument principles that were adopted only three years ago by the United Nations in the framework of a non-binding declaration.

Health (art. 24): In addition to its explicit references to primary health care and to education regarding the advantages of breast-feeding as means of promoting access to the highest attainable standard of health, this article stands out because it mentions — for the first time in a binding international instrument — a State obligation to work towards the abolition of traditional practices, such as female circumcision and preferential treatment of male children, that have harmful consequences for children's health.

Periodic review of placement (art. 26): The obligation to review periodically all institutional placements designed to ensure the care, protection or treatment of children, in order to determine whether or not they are still appropriate, responds to a recently-voiced concern and, again, has never previously figured in a human rights instrument.

Education (art. 28): The novelty here is that, whilst corporal punishment is not explicitly outlawed, there is reference to the fact that school discipline must be administered "*in a manner consistent with the child's human dignity*", another "first".

Drug abuse (art. 33): This is the first time that specific mention is made of the need for protection of children from drug abuse and from being used in the production and distribution processes of illicit substances.

Deprivation of liberty (art. 37): The aspect of special note in this article is the inclusion of the principle that deprivation of liberty must be looked upon as a last resort and, if it is nonetheless ordered, must be limited to the shortest possible period of time.

Rehabilitative care (art. 39): An important addition to the body of children's rights is this article which places an obligation on States to promote adequate treatment for children harmed physically or psychologically as a result of violations of their right to protection, in particular, from exploitation and cruelty.

Administration of juvenile justice (art. 40): Many of the essential principles of the 1985 UN Standard Minimum Rules for the Administration of Juvenile Justice — a non-binding instrument — have been incorporated into this article, the longest and most detailed of the whole Convention, with the result that international norms in this sphere have been significantly upgraded.

Making the Convention known (art. 42): Strictly speaking, this article comes under the implementation provisions of the Convention. It is well worth highlighting here, however, because it is the first time that specific and explicit recognition has been given to the need for children themselves to receive information on their rights. This is a further indication of the gradually changing attitude towards children that, overall, this Convention both reflects and helps to foster.

As noted previously, this should not be seen as an exhaustive list of the improvements that the Convention brings to children's rights standards. Many others — including those dealing with minority children or indigenous children, the special needs of handicapped children, protection from all forms of exploitation, freedom of expression and association, to name but a few — could also validly be mentioned. With that proviso, however, it does demonstrate the considerable extent to which the Convention contributes to the struggle to improve practices and objectives in child welfare and protection. ■

■ ...and drug abuse to awareness-building