



Convention on the Rights of the Child

Distr.
GENERAL

CRC/GC/2003/3
17 March 2003

Original: ENGLISH

COMMITTEE ON THE RIGHTS OF THE CHILD
Thirty-second session
13-31 January 2003

GENERAL COMMENT No. 3 (2003)

HIV/AIDS and the rights of the child

I. INTRODUCTION¹

1. The HIV/AIDS epidemic has drastically changed the world in which children live. Millions of children have been infected and have died and many more are gravely affected as HIV spreads through their families and communities. The epidemic impacts on the daily life of younger children, and increases the victimization and marginalization of children, especially

¹ At its seventeenth session (1998), the Committee on the Rights of the Child held a day of general discussion on the theme of HIV/AIDS and children's rights, in which it recommended that a number of actions be taken, including facilitating the engagement of States parties on HIV/AIDS issues in relation to the rights of the child. Human rights in relation to HIV/AIDS has also been discussed at the Eighth Meeting of Persons Chairing the Human Rights Treaty Bodies in 1997 and has been taken up by the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination against Women. Similarly, HIV/AIDS has been discussed annually by the Commission on Human Rights for over a decade. UNAIDS and the United Nations Children's Fund (UNICEF) have emphasized the rights of the child in relation to HIV/AIDS in all aspects of their work, and the World AIDS Campaign for 1997 focused on "Children Living in a World with AIDS" and for 1998 on "Force for Change: World AIDS Campaign with Young People". UNAIDS and the Office of the United Nations High Commissioner for Human Rights have also produced *The International Guidelines on HIV/AIDS and Human Rights* (1998) and its *Revised Guideline 6* (2002) to promote and protect human rights in the context of HIV/AIDS. At the international political level, HIV/AIDS-related rights have been recognized in the *Declaration of Commitment on HIV/AIDS*, adopted at the United Nations General Assembly special session, *A World Fit for Children*, adopted at the United Nations General Assembly special session on children, and in other international and regional documents.

those living in particularly difficult circumstances. HIV/AIDS is not a problem of some countries but of the entire world. To truly bring its impact on children under control will require concerted and well-targeted efforts from all countries at all stages of development.

2. Initially children were considered to be only marginally affected by the epidemic. However, the international community has discovered that, unfortunately, children are at the heart of the problem. According to the Joint United Nations Programme on HIV/AIDS (UNAIDS), the most recent trends are alarming: in most parts of the world the majority of new infections are among young people between the ages of 15 and 24, sometimes younger. Women, including young girls, are also increasingly becoming infected. In most regions of the world, the vast majority of infected women do not know that they are infected and may unknowingly infect their children. Consequently, many States have recently registered an increase in their infant and child mortality rates. Adolescents are also vulnerable to HIV/AIDS because their first sexual experience may take place in an environment in which they have no access to proper information and guidance. Children who use drugs are at high risk.

3. Yet, all children can be rendered vulnerable by the particular circumstances of their lives, especially (a) children who are themselves HIV-infected; (b) children who are affected by the epidemic because of the loss of a parental caregiver or teacher and/or because their families or communities are severely strained by its consequences; and (c) children who are most prone to be infected or affected.

II. THE OBJECTIVES OF THE PRESENT GENERAL COMMENT

4. The objectives of the present General Comment are:

(a) To identify further and strengthen understanding of all the human rights of children in the context of HIV/AIDS;

(b) To promote the realization of the human rights of children in the context of HIV/AIDS, as guaranteed under the Convention on the Rights of the Child (hereafter “the Convention”);

(c) To identify measures and good practices to increase the level of implementation by States of the rights related to the prevention of HIV/AIDS and the support, care and protection of children infected with or affected by this pandemic;

(d) To contribute to the formulation and promotion of child-oriented plans of action, strategies, laws, policies and programmes to combat the spread and mitigate the impact of HIV/AIDS at the national and international levels.

III. THE CONVENTION’S PERSPECTIVES ON HIV/AIDS: THE HOLISTIC CHILD RIGHTS-BASED APPROACH

5. The issue of children and HIV/AIDS is perceived as mainly a medical or health problem, although in reality it involves a much wider range of issues. In this regard, the right to health (article 24 of the Convention) is, however, central. But HIV/AIDS impacts so heavily on the

lives of all children that it affects all their rights - civil, political, economic, social and cultural. The rights embodied in the general principles of the Convention - the right to non-discrimination (art. 2), the right of the child to have his/her interest as a primary consideration (art. 3), the right to life, survival and development (art. 6) and the right to have his/her views respected (art. 12) - should therefore be the guiding themes in the consideration of HIV/AIDS at all levels of prevention, treatment, care and support.

6. Adequate measures to address HIV/AIDS can be undertaken only if the rights of children and adolescents are fully respected. The most relevant rights in this regard, in addition to those enumerated in paragraph 5 above, are the following: the right to access information and material aimed at the promotion of their social, spiritual and moral well-being and physical and mental health (art. 17); the right to preventive health care, sex education and family planning education and services (art. 24 (f)); the right to an appropriate standard of living (art. 27); the right to privacy (art. 16); the right not to be separated from parents (art. 9); the right to be protected from violence (art. 19); the right to special protection and assistance by the State (art. 20); the rights of children with disabilities (art. 23); the right to health (art. 24); the right to social security, including social insurance (art. 26); the right to education and leisure (arts. 28 and 31); the right to be protected from economic and sexual exploitation and abuse, and from illicit use of narcotic drugs (arts. 32, 33, 34 and 36); the right to be protected from abduction, sale and trafficking as well as torture or other cruel, inhuman or degrading treatment or punishment (arts. 35 and 37); and the right to physical and psychological recovery and social reintegration (art. 39). Children are confronted with serious challenges to the above-mentioned rights as a result of the epidemic. The Convention, and in particular the four general principles with their comprehensive approach, provide a powerful framework for efforts to reduce the negative impact of the pandemic on the lives of children. The holistic rights-based approach required to implement the Convention is the optimal tool for addressing the broader range of issues that relate to prevention, treatment and care efforts.

A. The right to non-discrimination (art. 2)

7. Discrimination is responsible for heightening the vulnerability of children to HIV and AIDS, as well as seriously impacting the lives of children who are affected by HIV/AIDS, or are themselves HIV infected. Girls and boys of parents living with HIV/AIDS are often victims of stigma and discrimination as they too are often assumed to be infected. As a result of discrimination, children are denied access to information, education (see the Committee's General Comment No. 1 on the aims of education), health or social care services or community life. At its extreme, discrimination against HIV-infected children has resulted in their abandonment by their family, community and/or society. Discrimination also fuels the epidemic by making children in particular those belonging to certain groups like children living in remote or rural areas where services are less accessible, more vulnerable to infection. These children are thus doubly victimized.

8. Of particular concern is gender-based discrimination combined with taboos or negative or judgemental attitudes to sexual activity of girls, often limiting their access to preventive measures and other services. Of concern also is discrimination based on sexual orientation. In the design of HIV/AIDS-related strategies, and in keeping with their obligations under the Convention, States parties must give careful consideration to prescribed gender norms within

their societies with a view to eliminating gender-based discrimination as these norms impact on the vulnerability of both girls and boys to HIV/AIDS. States parties should, in particular, recognize that discrimination in the context of HIV/AIDS often impacts girls more severely than boys.

9. All the above-mentioned discriminatory practices are violations of children's rights under the Convention. Article 2 of the Convention obliges States parties to ensure all the rights set forth in the Convention without discrimination of any kind, "irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status". The Committee interprets "other status" under article 2 of the Convention to include HIV/AIDS status of the child or his/her parent(s). Laws, policies, strategies and practices should address all forms of discrimination that contribute to increasing the impact of the epidemic. Strategies should also promote education and training programmes explicitly designed to change attitudes of discrimination and stigmatization associated with HIV/AIDS.

B. Best interests of the child (art. 3)

10. Policies and programmes for the prevention, care and treatment of HIV/AIDS have generally been designed for adults with scarce attention to the principle of the best interests of the child as a primary consideration. Article 3, paragraph 1, of the Convention states "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration". The obligations attached to this right are fundamental to guiding the action of States in relation to HIV/AIDS. The child should be placed at the centre of the response to the pandemic, and strategies should be adapted to children's rights and needs.

C. The right to life, survival and development (art. 6)

11. Children have the right not to have their lives arbitrarily taken, as well as to benefit from economic and social policies that will allow them to survive into adulthood and develop in the broadest sense of the word. State obligation to realize the right to life, survival and development also highlights the need to give careful attention to sexuality as well as to the behaviours and lifestyles of children, even if they do not conform with what society determines to be acceptable under prevailing cultural norms for a particular age group. In this regard, the female child is often subject to harmful traditional practices, such as early and/or forced marriage, which violate her rights and make her more vulnerable to HIV infection, including because such practices often interrupt access to education and information. Effective prevention programmes are only those that acknowledge the realities of the lives of adolescents, while addressing sexuality by ensuring equal access to appropriate information, life skills, and to preventive measures.

D. The right to express views and have them taken into account (art. 12)

12. Children are rights holders and have a right to participate, in accordance with their evolving capacities, in raising awareness by speaking out about the impact of HIV/AIDS on their lives and in the development of HIV/AIDS policies and programmes. Interventions have been found to benefit children most when they are actively involved in assessing needs, devising

solutions, shaping strategies and carrying them out rather than being seen as objects for whom decisions are made. In this regard, the participation of children as peer educators, both within and outside schools, should be actively promoted. States, international agencies and non-governmental organizations must provide children with a supportive and enabling environment to carry out their own initiatives, and to fully participate at both community and national levels in HIV policy and programme conceptualization, design, implementation, coordination, monitoring and review. A variety of approaches are likely to be necessary to ensure the participation of children from all sectors of society, including mechanisms which encourage children, consistent with their evolving capacities, to express their views, have them heard, and given due weight in accordance with their age and maturity (art. 12, para. 1). Where appropriate, the involvement of children living with HIV/AIDS in raising awareness, by sharing their experiences with their peers and others, is critical both to effective prevention and to reducing stigmatization and discrimination. States parties must ensure that children who participate in these awareness-raising efforts do so voluntarily, after being counselled, and that they receive both the social support and legal protection to allow them to lead normal lives during and after their involvement.

E. Obstacles

13. Experience has shown that many obstacles hinder effective prevention, delivery of care services and support for community initiatives on HIV/AIDS. These are mainly cultural, structural and financial. Denying that a problem exists, cultural practices and attitudes, including taboos and stigmatization, poverty and patronizing attitudes towards children are just some of the obstacles that may block the political and individual commitment needed for effective programmes.

14. With regard to financial, technical and human resources, the Committee is aware that such resources may not be immediately available. However, concerning this obstacle, the Committee wishes to remind States parties of their obligations under article 4. It further notes that resource constraints should not be used by States parties to justify their failure to take any or enough of the technical or financial measures required. Finally, the Committee wishes to emphasize in this regard the essential role of international cooperation.

IV. PREVENTION, CARE, TREATMENT AND SUPPORT

15. The Committee wishes to stress that prevention, care, treatment and support are mutually reinforcing elements and provide a continuum within an effective response to HIV/AIDS.

A. Information on HIV prevention and awareness-raising

16. Consistent with the obligations of States parties in relation to the rights to health and information (arts. 24, 13 and 17), children should have the right to access adequate information related to HIV/AIDS prevention and care, through formal channels (e.g. through educational opportunities and child-targeted media) as well as informal channels (e.g. those targeting street children, institutionalized children or children living in difficult circumstances). States parties are reminded that children require relevant, appropriate and timely information which recognizes the differences in levels of understanding among them, is tailored appropriately to age level and

capacity and enables them to deal positively and responsibly with their sexuality in order to protect themselves from HIV infection. The Committee wishes to emphasize that effective HIV/AIDS prevention requires States to refrain from censoring, withholding or intentionally misrepresenting health-related information, including sexual education and information, and that, consistent with their obligations to ensure the right to life, survival and development of the child (art. 6), States parties must ensure that children have the ability to acquire the knowledge and skills to protect themselves and others as they begin to express their sexuality.

17. Dialogue with community, family and peer counsellors, and the provision of “life skills” education within schools, including skills in communicating on sexuality and healthy living, have been found to be useful approaches to delivering HIV prevention messages to both girls and boys, but different approaches may be necessary to reach different groups of children. States parties must make efforts to address gender differences as they may impact on the access children have to prevention messages, and ensure that children are reached with appropriate prevention messages even if they face constraints due to language, religion, disability or other factors of discrimination. Particular attention must be paid to raising awareness among hard-to-reach populations. In this respect, the role of the mass media and/or oral tradition in ensuring that children have access to information and material, as recognized in article 17 of the Convention, is crucial both to providing appropriate information and to reducing stigmatization and discrimination. States parties should support the regular monitoring and evaluation of HIV/AIDS awareness campaigns to ascertain their effectiveness in providing information, reducing ignorance, stigmatization and discrimination, as well as addressing fear and misperceptions concerning HIV and its transmission among children, including adolescents.

B. The role of education

18. Education plays a critical role in providing children with relevant and appropriate information on HIV/AIDS, which can contribute to increased awareness and better understanding of this pandemic and prevent negative attitudes towards victims of HIV/AIDS (see also the Committee’s General Comment No. 1 on the aims of education). Furthermore, education can and should empower children to protect themselves from the risk of HIV infection. In this regard, the Committee wishes to remind States parties of their obligation to ensure that primary education is available to all children, whether infected, orphaned or otherwise affected by HIV/AIDS. In many communities where HIV has spread widely, children from affected families, in particular girls, are facing serious difficulties staying in school and the number of teachers and other school employees lost to AIDS is limiting and threatening to destroy the ability of children to access education. States parties must make adequate provision to ensure that children affected by HIV/AIDS can stay in school and ensure the qualified replacement of sick teachers so that children’s regular attendance at schools is not affected, and that the right to education (art. 28) of all children living within these communities is fully protected.

19. States parties must make every effort to ensure that schools are safe places for children, which offer them security and do not contribute to their vulnerability to HIV infection. In accordance with article 34 of the Convention, States parties are under obligation to take all appropriate measures to prevent, inter alia, the inducement or coercion of a child to engage in any unlawful sexual activity.

C. Child and adolescent sensitive health services

20. The Committee is concerned that health services are generally still insufficiently responsive to the needs of children under 18 years of age, in particular adolescents. As the Committee has noted on numerous occasions, children are more likely to use services that are friendly and supportive, provide a wide range of services and information, are geared to their needs, give them the opportunity to participate in decisions affecting their health, are accessible, affordable, confidential and non-judgemental, do not require parental consent and are not discriminatory. In the context of HIV/AIDS and taking into account the evolving capacities of the child, States parties are encouraged to ensure that health services employ trained personnel who fully respect the rights of children to privacy (art. 16) and non-discrimination in offering them access to HIV-related information, voluntary counselling and testing, knowledge of their HIV status, confidential sexual and reproductive health services, and free or low-cost contraceptive, methods and services, as well as HIV-related care and treatment if and when needed, including for the prevention and treatment of health problems related to HIV/AIDS, e.g. tuberculosis and opportunistic infections.

21. In some countries, even when child- and adolescent-friendly HIV-related services are available, they are not sufficiently accessible to children with disabilities, indigenous children, children belonging to minorities, children living in rural areas, children living in extreme poverty or children who are otherwise marginalized within the society. In others, where the health system's overall capacity is already strained, children with HIV have been routinely denied access to basic health care. States parties must ensure that services are provided to the maximum extent possible to all children living within their borders, without discrimination, and that they sufficiently take into account differences in gender, age and the social, economic, cultural and political context in which children live.

D. HIV counselling and testing

22. The accessibility of voluntary, confidential HIV counselling and testing services, with due attention to the evolving capacities of the child, is fundamental to the rights and health of children. Such services are critical to children's ability to reduce the risk of contracting or transmitting HIV, to access HIV-specific care, treatment and support, and to better plan for their futures. Consistent with their obligation under article 24 of the Convention to ensure that no child is deprived of his or her right of access to necessary health services, States parties should ensure access to voluntary, confidential HIV counselling and testing for all children.

23. The Committee wishes to stress that, as the duty of States parties is first and foremost to ensure that the rights of the child are protected, States parties must refrain from imposing mandatory HIV/AIDS testing of children in all circumstances and ensure protection against it. While the evolving capacities of the child will determine whether consent is required from him or her directly or from his or her parent or guardian, in all cases, consistent with the child's right to receive information under articles 13 and 17 of the Convention, States parties must ensure that, prior to any HIV testing, whether by health-care providers in relation to children who are accessing health services for another medical condition or otherwise, the risks and benefits of such testing are sufficiently conveyed so that an informed decision can be made.

24. States parties must protect the confidentiality of HIV test results, consistent with the obligation to protect the right to privacy of children (art. 16), including within health and social welfare settings, and information on the HIV status of children may not be disclosed to third parties, including parents, without the child's consent.

E. Mother-to-child transmission

25. Mother-to-child transmission (MTCT) is responsible for the majority of HIV infections in infants and young children. Infants and young children can be infected with HIV during pregnancy, labour and delivery, and through breastfeeding. States parties are requested to ensure implementation of the strategies recommended by the United Nations agencies to prevent HIV infection in infants and young children. These include: (a) the primary prevention of HIV infection among parents-to-be; (b) the prevention of unintended pregnancies in HIV-infected women, (c) the prevention of HIV transmission from HIV-infected women to their infants; and (d) the provision of care, treatment and support to HIV-infected women, their infants and families.

26. To prevent MTCT of HIV, States parties must take steps, including the provision of essential drugs, e.g. anti-retroviral drugs, appropriate antenatal, delivery and post-partum care, and making HIV voluntary counselling and testing services available to pregnant women and their partners. The Committee recognizes that anti-retroviral drugs administered to a woman during pregnancy and/or labour and, in some regimens, to her infant, have been shown to significantly reduce the risk of transmission from mother to child. However, in addition, States parties should provide support for mothers and children, including counselling on infant feeding options. States parties are reminded that counselling of HIV-positive mothers should include information about the risks and benefits of different infant feeding options, and guidance on selecting the option most likely to be suitable for their situation. Follow-up support is also required in order for women to be able to implement their selected option as safely as possible.

27. Even in populations with high HIV prevalence, the majority of infants are born to women who are not HIV-infected. For the infants of HIV-negative women and women who do not know their HIV status, the Committee wishes to emphasize, consistent with articles 6 and 24 of the Convention, that breastfeeding remains the best feeding choice. For the infants of HIV-positive mothers, available evidence indicates that breastfeeding can add to the risk of HIV transmission by 10-20 per cent, but that lack of breastfeeding can expose children to an increased risk of malnutrition or infectious diseases other than HIV. United Nations agencies have recommended that, where replacement feeding is affordable, feasible, acceptable, sustainable and safe, avoidance of all breastfeeding by HIV-infected mothers is recommended; otherwise, exclusive breastfeeding is recommended during the first months of life and should then be discontinued as soon as it is feasible.

F. Treatment and care

28. The obligations of States parties under the Convention extend to ensuring that children have sustained and equal access to comprehensive treatment and care, including necessary HIV-related drugs, goods and services on a basis of non-discrimination. It is now widely recognized that comprehensive treatment and care includes anti-retroviral and other drugs,

diagnostics and related technologies for the care of HIV/AIDS, related opportunistic infections and other conditions, good nutrition, and social, spiritual and psychological support, as well as family, community and home-based care. In this regard, States parties should negotiate with the pharmaceutical industry in order to make the necessary medicines locally available at the lowest costs possible. Furthermore, States parties are requested to affirm, support and facilitate the involvement of communities in the provision of comprehensive HIV/AIDS treatment, care and support, while at the same time complying with their own obligations under the Convention. States parties are called upon to pay special attention to addressing those factors within their societies that hinder equal access to treatment, care and support for all children.

G. Involvement of children in research

29. Consistent with article 24 of the Convention, States parties must ensure that HIV/AIDS research programmes include specific studies that contribute to effective prevention, care, treatment and impact reduction for children. States parties must, nonetheless, ensure that children do not serve as research subjects until an intervention has already been thoroughly tested on adults. Rights and ethical concerns have arisen in relation to HIV/AIDS biomedical research, HIV/ADS operations, and social, cultural and behavioural research. Children have been subjected to unnecessary or inappropriately designed research with little or no voice to either refuse or consent to participation. In line with the child's evolving capacities, consent of the child should be sought and consent may be sought from parents or guardians if necessary, but in all cases consent must be based on full disclosure of the risks and benefits of research to the child. States parties are further reminded to ensure that the privacy rights of children, in line with their obligations under article 16 of the Convention, are not inadvertently violated through the research process and that personal information about children, which is accessed through research, is, under no circumstances, used for purposes other than that for which consent was given. States parties must make every effort to ensure that children and, according to their evolving capacities, their parents and/or their guardians participate in decisions on research priorities and that a supportive environment is created for children who participate in such research.

V. VULNERABILITY AND CHILDREN NEEDING SPECIAL PROTECTION

30. The vulnerability of children to HIV/AIDS resulting from political, economic, social, cultural and other factors determines the likelihood of their being left with insufficient support to cope with the impact of HIV/AIDS on their families and communities, exposed to the risk of infection, subjected to inappropriate research, or deprived of access to treatment, care and support if and when HIV infection sets in. Vulnerability to HIV/AIDS is most acute for children living in refugee and internally displaced persons camps, children in detention, children living in institutions, as well as children living in extreme poverty, children living in situations of armed conflict, child soldiers, economically and sexually exploited children, and disabled, migrant, minority, indigenous, and street children. However, all children can be rendered vulnerable by the particular circumstances of their lives. Even in times of severe resource constraints, the Committee wishes to note that the rights of vulnerable members of society must be protected and

that many measures can be pursued with minimum resource implications. Reducing vulnerability to HIV/AIDS requires first and foremost that children, their families and communities be empowered to make informed choices about decisions, practices or policies affecting them in relation to HIV/AIDS.

A. Children affected and orphaned by HIV/AIDS

31. Special attention must be given to children orphaned by AIDS and to children from affected families, including child-headed households, as these impact on vulnerability to HIV infection. For children from families affected by HIV/AIDS, the stigmatization and social isolation they experience may be accentuated by the neglect or violation of their rights, in particular discrimination resulting in a decrease or loss of access to education, health and social services. The Committee wishes to underline the necessity of providing legal, economic and social protection to affected children to ensure their access to education, inheritance, shelter and health and social services, as well as to make them feel secure in disclosing their HIV status and that of their family members when the children deem it appropriate. In this respect, States parties are reminded that these measures are critical to the realization of the rights of children and to giving them the skills and support necessary to reduce their vulnerability and risk of becoming infected.

32. The Committee wishes to emphasize the critical implications of proof of identity for children affected by HIV/AIDS, as it relates to securing recognition as a person before the law, safeguarding the protection of rights, in particular to inheritance, education, health and other social services, as well as to making children less vulnerable to abuse and exploitation, particularly if separated from their families due to illness or death. In this respect, birth registration is critical to ensuring the rights of the child and is also necessary to minimize the impact of HIV/AIDS on the lives of affected children. States parties are, therefore, reminded of their obligation under article 7 of the Convention to ensure that systems are in place for the registration of every child at or immediately after birth.

33. The trauma HIV/AIDS brings to the lives of orphans often begins with the illness and death of one of their parents, and is frequently compounded by the effects of stigmatization and discrimination. In this respect, States parties are particularly reminded to ensure that both law and practice support the inheritance and property rights of orphans, with particular attention to the underlying gender-based discrimination which may interfere with the fulfilment of these rights. Consistent with their obligations under article 27 of the Convention, States parties must also support and strengthen the capacity of families and communities of children orphaned by AIDS to provide them with a standard of living adequate for their physical, mental, spiritual, moral, economic and social development, including access to psychosocial care, as needed.

34. Orphans are best protected and cared for when efforts are made to enable siblings to remain together, and in the care of relatives or family members. The extended family, with the support of the surrounding community, may be the least traumatic and therefore the best way to care for orphans when there are no other feasible alternatives. Assistance must be provided so that, to the maximum extent possible, children can remain within existing family structures. This option may not be available due to the impact HIV/AIDS has on the extended family. In that case, States parties should provide, as far as possible, for family-type alternative care (e.g. foster

care). States parties are encouraged to provide support, financial and otherwise, when necessary, to child-headed households. States parties must ensure that their strategies recognize that communities are at the front line of the response to HIV/AIDS and that these strategies are designed to assist communities in determining how best to provide support to the orphans living there.

35. Although institutionalized care may have detrimental effects on child development, States parties may, nonetheless, determine that it has an interim role to play in caring for children orphaned by HIV/AIDS when family-based care within their own communities is not a possibility. It is the opinion of the Committee that any form of institutionalized care for children should only serve as a measure of last resort, and that measures must be fully in place to protect the rights of the child and guard against all forms of abuse and exploitation. In keeping with the right of children to special protection and assistance when within these environments, and consistent with articles 3, 20 and 25 of the Convention, strict measures are needed to ensure that such institutions meet specific standards of care and comply with legal protection safeguards. States parties are reminded that limits must be placed on the length of time children spend in these institutions, and programmes must be developed to support any children who stay in these institutions, whether infected or affected by HIV/AIDS, to successfully reintegrate them into their communities.

B. Victims of sexual and economic exploitation

36. Girls and boys who are deprived of the means of survival and development, particularly children orphaned by AIDS, may be subjected to sexual and economic exploitation in a variety of ways, including the exchange of sexual services or hazardous work for money to survive, support their sick or dying parents and younger siblings, or to pay for school fees. Children who are infected or directly affected by HIV/AIDS may find themselves at a double disadvantage - experiencing discrimination on the basis of both their social and economic marginalization and their, or their parents', HIV status. Consistent with the right of children under articles 32, 34, 35 and 36 of the Convention, and in order to reduce children's vulnerability to HIV/AIDS, States parties are under obligation to protect children from all forms of economic and sexual exploitation, including ensuring they do not fall prey to prostitution networks, and that they are protected from performing any work likely to be prejudicial to, or to interfere with, their education, health, or physical, mental, spiritual, moral or social development. States parties must take bold action to protect children from sexual and economic exploitation, trafficking and sale and, consistent with the rights under article 39, create opportunities for those who have been subjected to such treatment to benefit from the support and caring services of the State and non-governmental entities engaged in these issues.

C. Victims of violence and abuse

37. Children may be exposed to various forms of violence and abuse which may increase the risk of their becoming HIV-infected, and may also be subjected to violence as a result of their being infected or affected by HIV/AIDS. Violence, including rape and other forms of sexual abuse, can occur in the family or foster setting or may be perpetrated by those with specific responsibilities towards children, including teachers and employees of institutions working with children, such as prisons and institutions concerned with mental health and other disabilities. In

keeping with the rights of the child set forth in article 19 of the Convention, States parties have the obligation to protect children from all forms of violence and abuse, whether at home, in school or other institutions, or in the community.

38. Programmes must be specifically adapted to the environment in which children live, to their ability to recognize and report abuses and to their individual capacity and autonomy. The Committee considers that the relationship between HIV/AIDS and the violence or abuse suffered by children in the context of war and armed conflict requires specific attention. Measures to prevent violence and abuse in these situations are critical, and States parties must ensure the incorporation of HIV/AIDS and child rights issues in addressing and supporting children - girls and boys - who were used by military or other uniformed personnel to provide domestic help or sexual services, or who are internally displaced or living in refugee camps. In keeping with States parties' obligations, including under articles 38 and 39 of the Convention, active information campaigns, combined with the counselling of children and mechanisms for the prevention and early detection of violence and abuse, must be put in place within conflict- and disaster-affected regions, and must form part of national and community responses to HIV/AIDS.

Substance abuse

39. The use of substances, including alcohol and drugs, may reduce the ability of children to exert control over their sexual conduct and, as a result, may increase their vulnerability to HIV infection. Injecting practices using unsterilized instruments further increase the risk of HIV transmission. The Committee notes that greater understanding of substance use behaviours among children is needed, including the impact that neglect and violation of the rights of the child has on these behaviours. In most countries, children have not benefited from pragmatic HIV prevention programmes related to substance use, which even when they do exist have largely targeted adults. The Committee wishes to emphasize that policies and programmes aimed at reducing substance use and HIV transmission must recognize the particular sensitivities and lifestyles of children, including adolescents, in the context of HIV/AIDS prevention. Consistent with the rights of children under articles 33 and 24 of the Convention, States parties are obligated to ensure the implementation of programmes which aim to reduce the factors that expose children to the use of substances, as well as those that provide treatment and support to children who are abusing substances.

VI. RECOMMENDATIONS

40. The Committee hereby reaffirms the recommendations, which emerged at the day of general discussion on children living in a world with HIV/AIDS (CRC/C/80), and calls upon States parties:

(a) To adopt and implement national and local HIV/AIDS-related policies, including effective plans of action, strategies, and programmes that are child-centred, rights-based and incorporate the rights of the child under the Convention, including by taking into account the recommendations made in the previous paragraphs of the present General Comment and those adopted at the United Nations General Assembly special session on children (2002);

(b) To allocate financial, technical and human resources, to the maximum extent possible, to supporting national and community-based action (art. 4), and, where appropriate, within the context of international cooperation (see paragraph 41 below).

(c) To review existing laws or enact new legislation with a view to implementing fully article 2 of the Convention, and in particular to expressly prohibiting discrimination based on real or perceived HIV/AIDS status so as to guarantee equal access for of all children to all relevant services, with particular attention to the child's right to privacy and confidentiality and to other recommendations made by the Committee in the previous paragraphs relevant to legislation;

(d) To include HIV/AIDS plans of action, strategies, policies and programmes in the work of national mechanisms responsible for monitoring and coordinating children's rights and to consider the establishment of a review procedure, which responds specifically to complaints of neglect or violation of the rights of the child in relation to HIV/AIDS, whether this entails the creation of a new legislative or administrative body or is entrusted to an existing national institution;

(e) To reassess their HIV-related data collection and evaluation to ensure that they adequately cover children as defined under the Convention, are disaggregated by age and gender ideally in five-year age groups, and include, as far as possible, children belonging to vulnerable groups and those in need of special protection;

(f) To include, in their reporting process under article 44 of the Convention, information on national HIV/AIDS policies and programmes and, to the extent possible, budgeting and resource allocations at the national, regional and local levels, as well as within these breakdowns the proportions allocated to prevention, care, research and impact reduction. Specific attention must be given to the extent to which these programmes and policies explicitly recognize children (in the light of their evolving capacities) and their rights, and the extent to which HIV-related rights of children are dealt with in laws, policies and practices, with specific attention to discrimination against children on the basis of their HIV status, as well as because they are orphans or the children of parents living with HIV/AIDS. The Committee requests States parties to provide a detailed indication in their reports of what they consider to be the most important priorities within their jurisdiction in relation to children and HIV/AIDS, and to outline the programme of activities they intend to pursue over the coming five years in order to address the problems identified. This would allow activities to be progressively assessed over time.

41. In order to promote international cooperation, the Committee calls upon UNICEF, World Health Organization, United Nations Population Fund, UNAIDS and other relevant international bodies, organizations and agencies to contribute systematically, at the national level, to efforts to ensure the rights of children in the context of HIV/AIDS, and also to continue to work with the Committee to improve the rights of the child in the context of HIV/AIDS. Further, the Committee urges States providing development cooperation to ensure that HIV/AIDS strategies are so designed as to take fully into account the rights of the child.

42. Non-governmental organizations, as well as community-based groups and other civil society actors, such as youth groups, faith-based organizations, women's organizations and traditional leaders, including religious and cultural leaders, all have a vital role to play in the response to the HIV/AIDS pandemic. States parties are called upon to ensure an enabling environment for participation by civil society groups, which includes facilitating collaboration and coordination among the various players, and that these groups are given the support needed to enable them to operate effectively without impediment (in this regard, States parties are specifically encouraged to support the full involvement of people living with HIV/AIDS, with particular attention to the inclusion of children, in the provision of HIV/AIDS prevention, care, treatment and support services).
