

# ARC resource pack

*Study material*

## Foundation module 2

Child rights-based approaches



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## Training material for this module

*Exercises and handouts are also listed at the end of each section.*

*When referred to in the text, exercises and handouts are always from the list of training material at the end of the section where the reference appears, unless the reference specifically points to other sections.*

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This module is one of the following series of **ARC resource pack** modules. Each includes study material, slides, exercises and handouts.

**Foundation modules**

- 1 Understanding childhoods
- 2 Child rights-based approaches
- 3 Programme design
- 4 Participation and inclusion
- 5 Advocacy
- 6 Community mobilisation
- 7 Psychosocial support

**Critical issue modules**

- 1 Abuse and exploitation
- 2 Education
- 3 Children with disabilities
- 4 Sexual and reproductive health
- 5 Landmine awareness
- 6 Separated children
- 7 Children associated with armed forces or armed groups

All modules include:

- **study material** giving detailed information on the module's subject and a list of further reading
- **slides** giving key learning points and extracts from the study material, offering a useful resource when introducing training events and exercises
- **training material** for participatory workshops that comprises **exercises** giving practical guidance for facilitators and **handouts** for participants.

The following documents are also included in the ARC resource pack CD-ROM to ensure you can make the most of these modules.

- User guide  
*An introduction to the ARC resource pack and the relationships between modules.*
- Training manual  
*Advice and ideas for training with ARC resource pack materials.*
- Facilitator's toolkit  
*General guidance on how to be an effective facilitator, with step-by-step introductions to a wide range of training methods.*
- Definitions of terms
- Acronyms

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**Contents**

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- OHCHR
- ICRC
- Save the Children

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## Introduction

This module is intended to provide a basic understanding of one of the key concepts underlying ARC resource pack: child rights and rights-based approaches and why they are important in emergency settings. This module outlines the international legal framework that is both the point of reference and the source of authority for engagement with the challenges faced by children. It also aims to clearly explain what child rights-based approaches are and how they can be applied in emergencies.

Human rights, humanitarian and refugee law are relevant to the protection of children and the exercise and enjoyment of their rights in emergencies, including refugee situations, internal displacement, natural and man-made disaster and conflict. The relative vulnerability of children, and the need to accord them special consideration and special protections has been long recognised and accepted. These considerations apply to all children, and especially so in circumstances where normal order is disrupted.

**Section 1 Introduction to rights** provides basic information on human rights and their basis in international law, as well as discussing rights-based approaches and the duty bearer and rights holder relationship.

**Section 2 The convention on the rights of the child** and relevant legal standards relating to children's rights, builds on the rights framework discussed in the first section and adds the child rights dimension. The UN Convention on the rights of the child (CRC) and its four guiding principles are described as well as the two optional protocols to the CRC. This section also addresses how children's rights are reflected in other human rights and humanitarian law instruments.

**Section 3 Child rights-based approaches** introduces the concept of incorporating children's rights into programming and describes why this is particularly important in emergencies. It also provides practical examples of child rights-based approaches in emergency situations.

**Section 4 The CRC and child rights monitoring** outlines the CRC reporting process and discusses the monitoring and reporting mechanism established by the Security Council through Resolution 1612.

### Definitions of terms

- **Accountability** States and other duty bearers are accountable and must act within the rule of law. They are answerable for the observance of human rights. They have to comply with the legal norms and standards enshrined in human rights instruments. Where they fail to do so, aggrieved rights holders are entitled to institute proceedings.
- **Civil and political rights** The rights of citizens to liberty and equality. Civil rights include freedom to worship, to think and express oneself, to vote, to take part in political life, and to have access to information. Many of these rights give rise to negative obligations for the States, that is, the State must not interfere with these rights. In some cases the obligation not to interfere is not absolute, but interference by the State is strictly regulated.
- **Collective rights** In contrast to individual rights for all human beings, collective rights are entitlements to some people belonging to a certain group of people, or a group within the group. The concept remains controversial, and is somewhat alien to



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most human rights treaties, which are constructed to protect the individual's rights and interest against the State and its interests. Nevertheless, the African charter on human and people's rights acknowledges the collective rights to economic, social and cultural development, peace and security and a satisfactory environment.

- **Committee on the Rights of the Child** The committee is the body of independent experts that monitors implementation of the CRC by its State parties. It also monitors the implementation of two optional protocols to the convention, on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography.
- **Customary international law** Unlike treaty law, customary international law is not written. To prove that a certain rule is customary one has to show that it is reflected in State practice and that there exists a conviction in the international community that such practice is required as a matter of law. In this context, **practice** relates to official State practice and therefore includes formal statements by States. When a rule is found to have the status of customary law it is binding on all States, unless the State is a persistent objector, that is has consistently and over time objected to this rule in its State practice.
- **Duty bearer** Body or individual who has responsibilities and obligations towards rights holders as enshrined in international and national law and human rights instruments. As the primary duty bearer, the State has a legal obligation to respect, protect and fulfil the human rights of all persons in its jurisdiction. This obligation of the State extends to all sub-entities of it such as the police, army, health service, local government and educational institutions (partially depending on the division of power that exists in national law). The courts and judges also have these obligations and should play a major role in ensuring that they are fulfilled. Individuals and companies may also have some duties mainly that as a rights holder they are not permitted to infringe on or limit any other person's rights in the exercise of their own rights.
- **Economic, social and cultural rights** These rights relate to the conditions necessary to meet basic human needs such as food, shelter, education, healthcare and gainful employment. They include the rights to education, adequate housing, food, water, the highest attainable standard of health and the right to work and rights at work, as well as the cultural rights of minorities and indigenous peoples. In general terms, these rights are progressive, that is the State must show constant and consistent acts towards the fulfilment of these rights.
- **Human rights treaties, covenants and conventions** These are part of international law. Used interchangeably, treaty, covenant and convention refer to legally binding agreements between States. These agreements define the duties of States parties to the treaty, covenant or convention. They apply in times of peace and conflict. Human rights treaties regulate obligations of States towards persons in their own territory (rather than towards other States).
- **Instrument** Legal tool used to designate, define and harmonise international human rights standards, for example: CRC; Convention on the rights of persons with disabilities; Protocol to prevent, suppress and punish trafficking in persons, especially women and children.





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- **Optional protocol (OP)** An optional protocol to a treaty is a multilateral agreement that State parties can ratify or accede to. It is intended to further a specific purpose of the treaty or to assist in the implementation of its provisions.
- **Ratification; to ratify** Ratification, acceptance and approval all refer to the act undertaken on the international plane, whereby a State establishes its consent to be bound by a treaty. Most multilateral treaties expressly provide for States to express their consent to be bound by signature subject to ratification, acceptance or approval.
- **Resolution** A formal text adopted by UN and regional mechanisms, or other inter-governmental bodies (not exclusive to UN system, also issued by regional mechanisms). Although any UN body can issue resolutions, in practice most resolutions are issued by the Security Council or the General Assembly. The legal status of UN resolutions has been a matter of intense debate.
- **Rights holder** The individual or collection of individuals in possession of a right and who can make a claim to see the right respected, protected and fulfilled. The rights holder may also have duties and obligations in relation to other rights holders. Companies and other commercial entities can also hold certain rights.
- **Universal declaration of human rights (UDHR)** Adopted by the General Assembly on 10 December 1948, it is the primary UN document establishing human rights standards and normalities. All member States have agreed to uphold the UDHR. Although the declaration was intended to be non-binding, through time its various provisions have been upheld by States in a consistent manner and largely codified in binding human rights treaties, thus giving it the status of customary international law, meaning that its provisions are binding upon all States irrespective of signature to other human rights treaties.



## Section 1

### Introduction to rights

Much of this section is taken from the Office of the High Commissioner for Human Rights *Frequently asked questions on a human rights-based approach to development cooperation*, 2006

#### Key learning points

- All people have basic rights to which they are entitled without discrimination.
- Human rights have been given legal status through the adoption of a series of treaties and other international instruments.
- The relationship between duty bearers and rights holders is a key element of rights-based approaches.

#### What are human rights?

Human rights are universal legal guarantees protecting individuals and groups against actions and omissions that interfere with fundamental freedoms, entitlements and human dignity. Human rights law obliges States (principally) and other duty bearers to do certain things and prohibits them from doing others.

Some of the most important characteristics of human rights are that they:

- are universal; the birthright of all human beings
- focus on the inherent dignity and equal worth of all human beings
- are equal, indivisible and interdependent
- cannot be waived or taken away
- impose obligations of action and omission, particularly on States and State actors
- have been internationally guaranteed
- are legally protected
- protect individuals and to some extent groups.

Among the rights guaranteed to all human beings under international treaties without any discrimination on grounds such as race, colour, sex, language, political or other opinion, national or social origin, property, birth or other status, are as follows.

- The right to life, liberty and security of person
- Freedom of association, expression, assembly and movement
- The right to the highest attainable standard of health
- Freedom from arbitrary arrest or detention
- The right to a fair trial
- The right to just and favourable working conditions
- The right to adequate food, housing and social security
- The right to education



- The right to equal protection of the law
- Freedom from arbitrary interference with privacy, family, home or correspondence
- Freedom from torture and cruel, inhuman or degrading treatment or punishment
- Freedom from slavery
- The right to a nationality
- Freedom of thought, conscience and religion
- The right to vote and take part in the conduct of public affairs (limited by nationality)
- The right to participate in cultural life
- The right to seek asylum from persecution (although there is no right to be granted asylum)

International human rights are universally recognised regardless of cultural differences, but their practical **implementation** does demand sensitivity to culture. International human rights standards enjoy a strong claim to universality with considerable adaptability to different cultural contexts. Article 1 of the Universal declaration of human rights (UDHR) states '*All human beings are born free and equal in dignity and rights.*' Human rights are inherent and inalienable in human beings, simply by the fact of their being human. The human person in whom they inhere cannot voluntarily give them up. Nor can others take them away. All countries have ratified at least one of the nine core UN human rights treaties and 80% of States have ratified four or more, giving concrete expression to this universal recognition.

The international human rights framework itself acknowledges cultural diversity by limiting the ambit of international human rights to a range of standards on which international consensus is possible. However, **culture** is neither static nor sacrosanct, but rather evolves according to external and internal stimuli. There is much in every culture that societies quite naturally outgrow and reject. In any case, culture is no excuse not to ensure the enjoyment of human rights. For instance, harmful traditional practices, such as female genital mutilation, even if embedded in long-standing cultural customs, need to change when they are in conflict with international human rights standards. Humanitarian and development efforts should assist the full realisation of international human rights standards whatever the country concerned.

### **International human rights law**

International recognition of the necessity of ensuring the protection of human rights was strengthened by UN General Assembly adoption of the UDHR on 10 December 1948. Drafted as '*a common standard of achievement for all peoples and nations*', the declaration for the first time in human history spells out basic civil, political, economic, social and cultural rights that all human beings should enjoy. It has over time been widely accepted as the fundamental norms of human rights that everyone should respect and protect. The UDHR, together with the International covenant on civil and political rights and its two optional protocols, and the International covenant on economic, social and cultural rights, and its recently adopted Optional protocol,<sup>1</sup> form the International bill of human rights.

A series of international human rights treaties and other instruments adopted since 1945 have formally conferred legally binding force to the inherent human rights and



developed the body of international human rights. Other instruments have been adopted at the regional level reflecting the particular human rights concerns of the region and providing for specific mechanisms of protection. Most States have also adopted constitutions and other laws which formally protect basic human rights. While international treaties and customary law form the backbone of international human rights law other instruments, such as declarations, guidelines and principles adopted at the international level contribute to its understanding, implementation and development. Respect for human rights requires the establishment of the rule of law at the national and international levels.

International human rights law lays down obligations which States are legally bound to adhere to. By becoming parties to international treaties, States assume obligations and duties under international law to respect, to protect and to fulfil human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of basic human rights.

Through ratification of international human rights treaties, States undertake to put into place domestic measures and legislation compatible with their treaty obligations and duties. Where domestic legal proceedings fail to address human rights abuses, mechanisms and procedures for individual complaints or communications are available at the regional and international levels to help ensure that international human rights standards are indeed respected, implemented, and enforced at the local level.

States collapsing, violent changes of government or states splitting up into several new entities are often accompanied by humanitarian crisis. In international law, these kinds of changes fall under the legal framework of State succession. In essence, all human rights treaties in effect will continue to maintain in force unless and until the State controlling the territory actively seeks to remove or change these obligations. This means that a change of government, however drastic, will never influence the human rights obligations of the State unless the new government actually manages to withdraw from the treaty. A change of name of the State normally has no impact either.

### Refugee law

The legal framework for protecting refugees is composed of the 1951 Convention relating to the status of refugees and its 1967 protocol, and regional refugee instruments, as well as UNHCR ExCom conclusions, policies and guidelines.

Implementation of refugee law is primarily up to States, although UNHCR has a task of supervising the application of the 1951 convention and States are required to cooperate with UNHCR under Article 35. The 1951 convention and its 1967 protocol are applicable to all persons who are refugees as defined in the instruments.

### Humanitarian law

The International Committee of the Red Cross (ICRC) defines humanitarian law as '*a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare. International humanitarian law is also known as the law of war or the law of armed conflict.*'<sup>2</sup> International humanitarian law applies only in times of conflict and is applicable not only in conflicts



between two or more States (international armed conflicts), but also when the conflict occurs on the territory of a single State, usually between government and dissident forces (internal conflicts). International humanitarian law primarily governs the actions of States or parties to armed conflicts.

The main treaties of international humanitarian law are the four Geneva conventions of 1949 and the two protocols of 1977. The primary focus of the four conventions is situations of international armed conflict, although a common Article 3 obliges all parties to a 'non-international' armed conflict including dissident armed factions, to respect certain minimum humanitarian rules with regard to persons who are not, or are no longer, taking part in hostilities. Children are included as any other civilian under Article 3 which is commonly seen to reflect international customary law, and thus be binding on all States regardless of ratification of the Geneva conventions.

To develop the protection measures available to civilian populations in armed conflict two protocols were adopted in 1977:

**Protocol 1** relating to the protection of victims of international armed conflicts

**Protocol 2** relating to the protection of victims of non-international armed conflicts.

### Humanitarian principles

In contrast to humanitarian law, humanitarian principles govern the conduct of third party actors or organisations providing assistance in emergency situations. The following humanitarian principles are derived from humanitarian law and form part of a human rights approach to programming. They are further elaborated in the Code of conduct for International Red Cross and Red Crescent Movement and NGOs in disaster relief available online:

[www.icrc.org/web/eng/siteeng0.nsf/htmlall/code-of-conduct-290296](http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/code-of-conduct-290296)

#### ● The humanitarian imperative

- to prevent and alleviate suffering
- to protect life and health, with dignity and attention to the most vulnerable
- to ensure respect for the human being.

The humanitarian imperative implies a right to receive humanitarian assistance and a duty to offer it. It also implies an overall approach to the protection of rights ie. the respect of international humanitarian law and human rights.

- **Neutrality** Relief organisations are not to take sides in the hostilities or in controversies based on political, racial, religious or ideological identity (non-partisanship). Transparency and openness are key in maintaining neutrality. In keeping with human rights principles. However neutrality does not imply that no action against particular child rights violations should be undertaken. In other words, relief agencies are to take no other side than the side of children. Military assets must only be used as a last resort provided the relief operation remains under the overall authority and control of humanitarian organisations.
- **Impartiality** Aid should be delivered to all those who are suffering regardless of their sex, age, ethnicity, or identity. The only guiding principle is their need and the corresponding human right. Where resources are not sufficient, priority is always given to those most affected, in conformity with all human rights and human rights principles.



In addition, the following principles, agreed by the Inter-agency Standing Committee (IASC) on humanitarian aid, should be followed in providing emergency assistance.

- **Do no (or less) harm** Aid must not become an indirect part of the dynamics of the conflict; assistance should support recovery and long-term development.
- **Accountability** Aid agencies are accountable to both communities (that their needs are met) and donors (that assistance is provided for the intended purpose).
- **Participation** Relief should build on existing capacities and promote participation.
- **Respect for culture and custom**

While humanitarian law is generally applicable in situations of conflict, the principles as explained above, also apply to natural disasters and other types of emergencies.

From UNICEF PPPM 2007:12

### Regional instruments

Often it may be easier for States to agree on and implement regional instruments because they provide a common approach to certain issues and deal with problems specific to the region or countries concerned. Regional instruments are usually adopted in the framework of a regional organisation. There are various regional human rights systems in Africa, Europe, the Americas and the Islamic and Arab States. Regional instruments can sometimes provide higher standards of protection than an international treaty. For example, the African charter on the rights and welfare of the child prohibits all forms of military recruitment of children under the age of 18, whereas the optional protocol to the CRC permits the voluntary recruitment of children under 18 by States in some instances.

### National law

National law contains the practical provisions for protecting children in emergencies including providing concrete implementation measures and mechanisms. In some States, the constitution guarantees some of the standards contained in international instruments. In some cases international treaties are self-executing, meaning that they can be directly invoked before the courts, while in others only when the provisions have first been incorporated into the national legislation. The State decides which one of these options to take. The fact that a law exists to protect certain rights is not enough if these laws do not also provide for all of the legal powers and institutions necessary to ensure their effective realisation. Staff working in a country should always refer to the national law of the State and the various mechanisms for their implementation.

### Non-binding instruments

Principles and practices of international law are often stated in declarations, resolutions, principles or guidelines. While they have no binding effect on States they nevertheless represent a broad consensus on the part of the international community. Sometimes they may be more detailed than treaties and can complement them. An example is the UN Guiding principles on internal displacement that identifies the rights and guarantees relevant to the protection of the internally displaced in all phases of displacement. They provide protection against arbitrary displacement, offer a basis for protection and assistance during displacement and set forth guarantees for safe return, resettlement and reintegration. Although they do not constitute a binding instrument, these principles reflect and are consistent with international human rights, humanitarian law and analogous refugee law.



### Rights-based approaches

A human rights-based approach is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights. It seeks to analyse inequalities which lie at the heart of development problems and redress discriminatory practices and unjust distributions of power that impede development progress. Mere charity is not enough from a human rights perspective. Under a human rights-based approach, the plans, policies and processes of development are anchored in a system of rights and corresponding obligations established in international law. This helps to promote the sustainability of development work, empowering people themselves, especially the most marginalised, to participate in policy formulation and hold accountable those who have a duty to act.

While there is no universal recipe for a human rights-based approach, the following are a number of essential attributes.

- As policies and programmes are formulated, the main objective should be to fulfil human rights.
- A human rights-based approach identifies **rights holders** and their entitlements, corresponding **duty bearers** and their obligations, and works towards strengthening the capacities of rights holders to make their claims and of duty bearers to meet their obligations.
- Principles and standards derived from international human rights treaties should guide all cooperation and programming in all sectors and in all phases of the programming process.

There are two main rationales for a human rights-based approach.

- 1 Intrinsic rationale** acknowledging that a human rights-based approach is the right thing to do, morally or legally.
- 2 Instrumental rationale** recognising that a human rights-based approach leads to better and more sustainable human development outcomes.

In practice, the reason for pursuing a human rights-based approach is usually a blend of these two. Empirical evidence and practice show the vital importance to development of many human rights outcomes, such as improved girls' education, enhanced security of tenure and ensuring women's equal access to land and the importance of civil and political rights for good governance.

### Advantages of rights-based programming

- provides international **legitimacy**
- offers a **systematic framework** for planning and programming
- focuses on **root causes**, sustainable solutions, **influencing policies** rather than delivery of services
- creates opportunities for **collaboration** with other organisations and agencies
- **human rights standards** are widely accepted
- holds duty bearers **accountable**





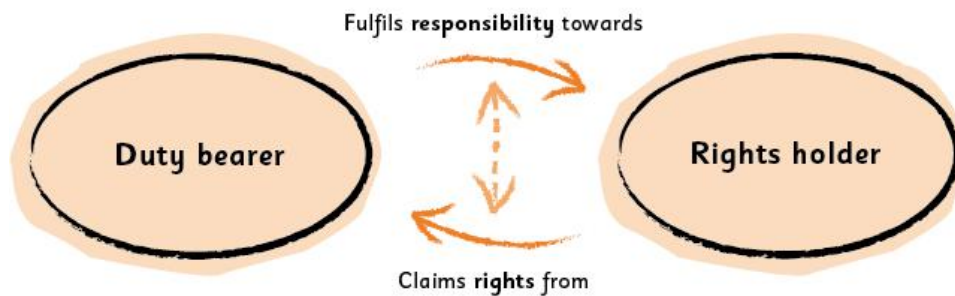
Investing time in understanding what a right is helps distinguish rights from needs.  
It's not rights **or** needs, it's: **rights = needs + obligation + accountability**

### The duty bearer and rights holder relationship

(adapted from *Getting it right for children*)

A fundamental element of rights-based approaches is the process through which duty bearers meet, and are held to account for, their obligations, and through which rights holders are empowered to claim their entitlements. Rights-based programming should help enable the effective functioning of the relationship between the duty bearer and the rights holder. Duty bearers may need to be held to account and supported to fulfil their obligations. It may also be necessary to empower and strengthen the capacity of children as rights holders (and others in civil society) to claim the entitlements to which they are due.

### A relationship between rights and responsibilities



### Who is the duty bearer?

Duty bearers are those defined as having obligations under international human rights conventions. The **State** is the **main duty bearer**. It has obligations to respect, protect and fulfil people's rights. Although the State always maintains responsibility for the rights of its citizens, it may delegate implementation to other entities (such as private companies or civil society groups). The international community also has obligations to support the State in meeting its responsibilities to fulfil children's rights. **Parents and others who care for children** are also duty bearers, with specific responsibilities towards children. They may be described as **secondary duty bearers**. Other individuals and groups may have certain responsibilities for children, depending



on the moral codes of the particular society or culture. These are generally **moral duties** rather than legal duties.

Human rights obligations can also attach to private individuals, international organisations and other non-State actors. Parents, for example, have explicit obligations under the CRC and States are obliged to cooperate with each other to eliminate obstacles to development. Moreover, individuals have general responsibilities towards the community at large and, at a minimum, must respect the human rights of others. However, the State remains the primary duty bearer under international law, and cannot abrogate its duty to set in place and enforce an appropriate regulatory environment for private sector activities and responsibilities. National legislation and policies must detail how the State's human rights obligations will be discharged at national, provincial and local levels, and the extent to which individuals, companies, local government units, NGOs or other organs of society will directly shoulder responsibility for implementation.

### **UN Common understanding of human rights-based approaches**

Over the last several years, development and humanitarian agencies have begun shifting their programming to reflect rights-based approaches. The UN, for example, has been moving to an organisation-wide understanding of and commitment to human rights-based approaches in all its work. Previously, each agency tended to have its own interpretation of the approach and how it should be operationalised. However, it was recognised that UN interagency collaboration at global, regional and country level required a common understanding of this approach and its implications for development programming. A statement of common understanding was thus reached in 2003, which specifically refers to a human rights-based approach to the development cooperation and development programming by UN agencies. Although the UN Common understanding has been outlined only for the development context, some elements will automatically apply to the humanitarian context, while others would need to be adapted to humanitarian situations.

In addition to the Common understanding, the revised CCA/UNDAF (Common country assessment and UN Development assistance framework) guidelines (2007) define a human rights-based approach as one of the five mandatory principles in UN common programming at the country level and the common learning package (CLP) on a human rights-based approach to UN common programming developed by the UN interagency Action 2 Global Programme, provides specific methodological guidance to apply a human rights-based approach in all phases of the programming process. The package is delivered systematically by the UN System Staff College (UNSSC) to all CCA/UNDAF roll out countries since 2007.

#### **Common understanding**

- 1** All programmes of development cooperation, policies and technical assistance should further the realisation of human rights as laid down in the UDHR and other international human rights instruments.
- 2** Human rights standards contained in, and principles derived from, the UDHR and other international human rights instruments guide all development cooperation and programming in all sectors and in all phases of the programming process.
- 3** Development cooperation contributes to the development of the capacities of duty bearers to meet their obligations and of rights holders to claim their rights.



**Training material for this section**

- Exercise 1** Developing a workshop bill of rights
- Exercise 2** Exploring participants' confidence in using rights-based approaches  
Scattergram
- Exercise 3** Rights and responsibilities relationship: Reincarnation island
- Handout 1** Scenario



## Section 2

### The convention on the rights of the child

#### Key learning points

- The CRC and its optional protocols offer the highest standards of protection and assistance for children of any international instrument.
- The CRC is based on four general principles:
  - non-discrimination
  - the best interests of the child
  - the right to life, survival and development
  - the right to be heard.
- The CRC offers potential for the protection of children in emergencies because of its near universal acceptance and non-discrimination principle.
- In addition to the CRC, many other legal instruments guarantee children's rights in development and emergency contexts.

Human rights apply to all age groups. Children have the same general human rights as adults. But children are particularly vulnerable and so they also have particular rights that recognise their special need for protection. These rights are enshrined in the CRC. The CRC was adopted in 1989 and came into force the next year. It is the human rights treaty with the highest rate of ratifications, with only two States, the US and Somalia, not parties to it. In 2000, two optional protocols to the CRC were adopted, one on the involvement of children in armed conflict and one on the sale of children, child prostitution and child pornography and both entered into force in early 2002. The CRC is the only international human rights treaty that expressly gives non-governmental organisations (NGOs) a role in monitoring its implementation under Article 45(a).

The near universal acceptance of the CRC establishes it as a set of international norms that are the basic minimum rights that children are entitled to.

The CRC defines a **child** as everyone less than 18 years of age '*unless, under the law applicable to the child, majority is attained earlier*' (Article 1). The Committee on the Rights of the Child, the monitoring body for the CRC, has encouraged States to review the age of majority if it is set below 18 and to increase the level of protection for all children under 18.

For an analysis on the specific rights in the CRC that relate to that critical issue see **Topic 2** of each **Critical issue** module.

With respect to international human rights law:

- The CRC is a comprehensive code of rights for children, offering the highest standards of protection and assistance for children under any international instrument. The protection standards go beyond the usual guarantees of health, education and welfare and include guarantees relating to the child's individual personality, rights to freedom of expression, religion, association, assembly and privacy.



- The CRC reflects a new vision of the child. Children are neither the property of their parents nor are they helpless objects of charity. They are human beings and are the subject of their own rights. The CRC offers a vision of the child as an individual and as a member of a family and the community, with rights appropriate to his or her age and stage of development.
- The CRC applies to all children within the jurisdiction of the country, including refugee and other displaced children.
- The CRC offers potential for the protection of refugee children even in States that are not party to refugee instruments.

#### Implementation

By ratifying the CRC, States commit to undertaking '*all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the convention*' (Article 4). States report on such measures to the Committee on the Rights of the Child, which is charged with monitoring States' implementation of the convention. CRC and child rights monitoring will be discussed in more detail in **Section 4**.

#### The role of local authorities

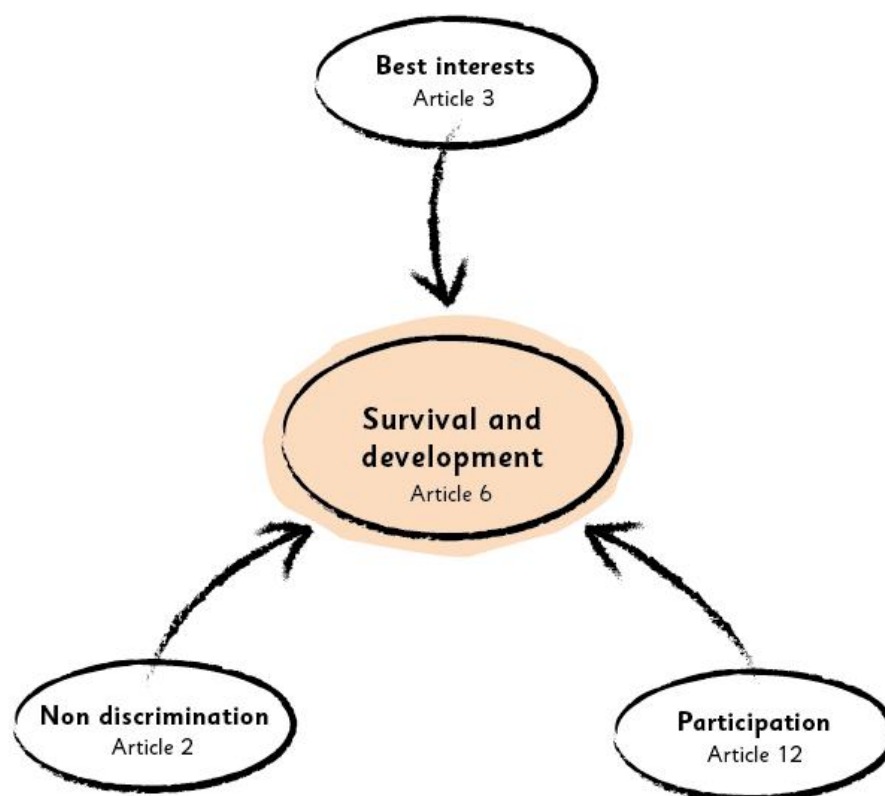
In many countries, local governments increasingly assume responsibility for protecting child rights. Local authorities have a pivotal role to play in giving support to other service providers and also in the areas of regulation, enforcement and monitoring of child rights. This role is increasing where decentralisation and reduction of safety nets have created vacuums in social provision, adding to the burden at the local level. In many such cases, municipal authorities and local branches of national agencies become the primary actors in providing basic services for children. Even where assistance from higher levels of government is lacking, local authorities retain the legal responsibility, as the representative of the State, to respect, protect, and fulfil the rights of children and to respond as best they can to the situation of children under their jurisdiction.

#### Guiding principles underlying the CRC

The CRC is underpinned by four main principles:

- non-discrimination
- the best interests of the child
- the right to life, survival and development
- the right to participation  
(the principles appear in a slide with this module).





These principles are inherent in the four rights expressed in Article 2, Article 3, Article 6 and Article 12. It is important to stress that these rights or principles do not stand alone; they interact with each other and with the other rights in the CRC. It is important to understand the concepts behind these interacting principles and apply them in programming.

### Non-discrimination

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

Article 2(1)

The theme of non-discrimination is of special importance for protection of refugee, displaced and other children in emergencies. It relates to the recognition that every child within a member State's jurisdiction should be given the opportunity to enjoy the rights recognised by the CRC without regard to citizenship, immigration status or any other status. The implementation of the articles of the CRC in a non-discriminatory manner ensures that measures of protection are aimed at removing all discrimination in every field, for example, between children who are nationals, displaced or aliens; between girls and boys; and children with disabilities and those without. The rights under the CRC are equally applicable to aliens, refugees, displaced and even those children who are in the State illegally. Legal status cannot be used as a basis for any form of discrimination against the child.

The Committee on the Rights of the Child regularly reviews the situation of refugee children and has on several occasions pointed out that the CRC is meant to ensure them equal rights.

### Best interests of the child

*'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.'*

Article 3(1)

The principle of best interests is particularly important in the context of the CRC, because for the first time, it clearly links the child's best interests to respect for and fulfilment of his or her rights.

The principle is evident, for example, in articles that provide obligations to consider the best interests of individual children in particular situations.

- **Separated children** The child shall not be separated from his or her parents against his or her will except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child (Article 9(1)). Children temporarily or permanently deprived of their family environment *'or in whose own best interests cannot be allowed to remain in that environment'* are entitled to special protection and assistance (Article 20).
- **Detained children** Children who are deprived of their liberty must be separated from adults *'unless it is considered in the child's best interest not to do so'* Article 37(c).

Article 3 emphasises that governments and public and private bodies must ascertain the impact on children of their actions in order to ensure that the best interests of the child are a primary consideration, giving proper priority to children and building child-friendly societies. The best interest of the child must also be considered by the State when formulating policy. The application of the article is not limited to the level of policy making, but also applies at the level of the individual child. How a course of action might affect the child individually must be looked at closely. In determining the child's best interests, the child's own views must be taken into consideration.

The decision about how to establish a child's best interests can often be difficult, and no single answer may be obviously and indisputably correct. There are many factors that may affect the best interests of the child, such as the age, sex, cultural background, general environment and past experiences of the child. All these factors make a precise definition of the principle difficult. Any interpretation of the principle must be in the spirit of the entire CRC, with the child being a subject of rights. The best interests of the child are best assessed on a case-by-case basis, involving the evaluation of all relevant factors and giving due regard to expert advice (both from a legal and child development perspective).

UNHCR's Guidelines on formal determination of the best interests of the child provide a useful tool for those who are required to make and document a formal determination of the best interests of the child at field level.



### Right to life, survival and development

*'States parties recognise that every child has the inherent right to life, and, shall ensure to the maximum extent possible the survival and development of the child.'*

Article 6

Under Article 6, States must adopt appropriate measures to safeguard this right. This includes taking measures to increase life expectancy and to lower infant and child mortality, as well as prohibitions on the death penalty. States should fully ensure the right to an adequate standard of living, including the right to housing, nutrition and the highest attainable standards of health. The **survival and development** principle is not limited to physical aspects but also emphasises the need to ensure full and harmonious development of the child, including at the spiritual, moral and social levels, where education plays a key role.

The principle is crucial to the implementation of the whole CRC. For example, early marriage threatens the rights of both the child-mother and her new baby to life and maximum survival and development. For all children, armed conflict poses a threat to the right to life, which cannot be revoked, even in times of emergency. Armed conflict can also have adverse effects on the child's mental and spiritual development as well as for survival if children are separated from their families or injured. Abuse, exploitation and violence also threaten child survival and development.

### Participation (the right to be heard)

*'States parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.'*

Article 12(1)

This article underlines children's status as individuals with civil and political human rights, and views and feelings of their own. The significance of this article is that the child has the right to influence decisions affecting his or her life; that children should be assured the right to express their views freely, but also that they should be heard and that their views be given due weight. This places an obligation on adults who are involved in decision making that affects children to make space for their views.

The principle of participation, for example, can be given effect in all asylum proceedings, when children's views and feelings should be taken seriously, including during refugee status determination. Participation by children and young people in the activities of the refugee or displaced community is another way in which States parties to the CRC can fulfil their obligation to guarantee 'individual personality' rights to refugee and other displaced children.

For more on this issue see **Foundation module 4** Participation and inclusion.

### A gender perspective on the CRC

The principle of **non-discrimination** in Article 2 specifically includes gender as an aspect of discrimination. States parties are required to actively protect the child against gender discrimination, including positive action and appropriate remedies. In its remarks on government reports, the Committee on the Rights of the Child has often expressed concern about gender discrimination. For instance, the committee has commented on:



- different marriage ages for girls and boys
- different inheritance rights
- inadequate or contradictory legislation
- lack of measures to address discriminatory attitudes and practices, especially harmful traditional practices such as female genital mutilation.

Similarly, the principle of **the child's best interests**, Article 3, is subject to different application on the basis of gender. Where there are competing or conflicting human rights interests, for example within the family or between individual children, the best interests of girls are often the first to be sacrificed. For example, two thirds of children not receiving a basic education are girls. When educational resources are allocated, girls' schools usually receive less funding and fewer scholarships. In other cases, girls who marry while children cease to be granted the status and rights of children at all, their education is likely to be interrupted, and they often bear children before their bodies are physically mature enough.

Article 6 **the right to life, survival and development**, requires governments to ensure that every girl and every boy has the right to fulfil her or his potential. This involves ensuring that all children have access to adequate food, education, healthcare, shelter, leisure, emotional support and respect; and a safe, healthy, caring, stimulating and diverse learning environment. However, where boys are valued over girls, unbalanced population figures by gender indicate that girls are dying, either through prenatal sex-selection, infanticide, or neglect during early infancy. Those girls who survive typically receive less food, healthcare, education, and rest and leisure than boys, and experience greater threat of violence, both in public and in the family. While child sexual exploitation affects girls more than boys, it is important not to lose sight of the effects for both genders. In many societies there is a greater taboo placed on the sexual exploitation of boys, which may mean that incidences of abuse and exploitation are even more under-reported than they are for girls.

Article 12, **respect for the views of the child**, also has an important gender dimension since *'girls are less encouraged than boys to participate in and learn about ... societies with the result that they are not offered the same opportunities as boys to take part in decision-making processes'* (Beijing platform for action, paragraph 265). To enjoy this right, educational and other strategies are needed to ensure girls an equal right to participation and to respect for their views.

### **Children's protection rights under the CRC**

The goal of child protection is to promote, protect and fulfil children's rights to protection from abuse, neglect, exploitation and violence. Save the Children has done an analysis of key CRC articles relating to child protection (from *Child protection in emergencies: principles, priorities and practices*, 2007).

Key child protection articles in the CRC are:

- Article 9 family separation
- Article 10 family reunification across borders
- Article 11 illicit transfer of children





- Article 16 right to privacy, honour and reputation
- Article 19 protection from violence, injury, abuse, neglect, maltreatment or exploitation
- Article 20 alternative care
- Article 21 adoption
- Article 22 refugee children
- Article 23 children with disabilities
- Article 24 harmful practices
- Article 25 periodic review of alternative care
- Article 32 economic exploitation
- Article 34 sexual abuse and exploitation
- Article 35 abduction, sale or trafficking of children
- Article 36 other forms of exploitation
- Article 37 juvenile justice and protection from torture or other cruel, inhuman or degrading treatment or punishment
- Article 38 protection in armed conflict
- Article 39 recovery and reintegration
- Article 40 children in conflict with the law.

Articles that are not protection rights but represent important approaches to securing children's protection rights include:

- Article 5 support for the parent, extended family and community
- Article 7 birth registration and protection of identity
- Article 18 parental responsibility
- Article 26 social security
- Article 27 adequate standard of living and social protection
- Article 28 and Article 29 education
- Article 31 play and leisure.

### **Optional protocols to the CRC**

Alarmed by the widespread involvement of children in armed conflicts, as well as increasing commercial sexual exploitation of children, the international community sought to strengthen the protection elements contained in the CRC.

Two optional protocols were adopted by the General Assembly in May 2000, and entered into force in 2002. The two optional protocols relate to the involvement of children in armed conflict and the sale of children, child prostitution and child pornography.



### **The Optional protocol on the involvement of children in armed conflict**

The optional protocol provides that States parties shall take all feasible measures to ensure that members of their armed forces under the age of 18 years shall not take part in hostilities (Article 1), and that persons under the age of 18 years are not compulsorily recruited into their armed forces (Article 2). It contains an absolute prohibition against the recruitment or use under any circumstances of children who are less than 18 years old by armed groups that are distinct from the armed forces of a State (Article 4). The protocol amends Article 38 of the CRC by raising the minimum age of voluntary recruitment (Article 3). States undertake to use all feasible measures to prohibit and criminalise under-age recruitment and use of children associated with armed forces or armed groups by non-State armed groups (Article 4).

It should be noted that voluntary recruitment of children under 18 years old by States is permissible under the protocol. However, the recruiting State authorities are required to put in place safeguards to ensure that the recruitment is voluntary, undertaken with the informed consent of the parents and that the children who are so recruited are requested to produce satisfactory proof of age prior to their recruitment.

### **The Optional protocol on the sale of children, child prostitution and child pornography**

The optional protocol calls on each State party to proscribe fully, under criminal or penal law, all acts and activities involving offering, delivering or accepting, by any means, a child for the purpose of sexual exploitation. Article 2 of the protocol defines what is meant by sale of children, child prostitution, and child pornography. The protocol also prohibits the transfer of a child's organs for profit and the engagement of children in forced labour. States undertake to criminalise any act that involves offering, obtaining, procuring, or providing a child for child prostitution, regardless of where the offence takes place and whether individuals or organised groups are responsible for its commission. The protocol stresses the importance of international cooperation to apply the principle of extraterritoriality, ie. that nationals of States parties, committing a sexual offence against children in another country, can be prosecuted in their own country (Article 4 and Article 6). The production, distribution, dissemination, importation, exportation, offer, sale or possession of child pornography for sexual purposes is also criminalised.

In addition to the CRC, many other international human rights and humanitarian law instruments protect the rights of children.

### **Other international legal instruments and how they relate to children**

Please note that in addition to the section below, **Topic 2** of each **Critical issue** module outlines the relevant legal standards that apply to that specific issue.

### **The 1951 Convention relating to the status of refugees**

The 1951 convention and its 1967 protocol are applicable to all persons who are refugees as defined in the instruments. '*All persons*' clearly includes children and adolescents. Age is taken for granted with respect to the non-discriminatory application of the articles in the convention, and as the convention defines a refugee regardless of age, no special provisions for the status of refugee children exist. Children thus have a right to seek asylum and obtain protection under the refugee instruments, based on their own claims. In addition, when accompanied by one or



both of their parents or guardians, they may be accorded derivative refugee status as dependants, and thus benefit from the needed protection. Although derivative status is not required under any article of the refugee treaties, States nevertheless so grant status in order to promote family unity. As a result of having been granted the status of refugee, refugee children benefit from the rights afforded to all refugees as outlined in refugee law and national laws. These rights include, for example:

- the right not to be returned to territories where the life or freedom of the child would be threatened on account of her or his race, religion, nationality, membership in a particular social group or political opinion
- the right to the same treatment as accorded to nationals with respect to elementary education.

UNHCR issued a Policy on refugee children in 1993, and Refugee children: guidelines on protection and care in 1994. UNHCR's Executive Committee has also adopted a number of conclusions on refugee children and adolescents in 1987 (Conclusion number 47), in 1989 (Conclusion number 59) and in 1997 (Conclusion number 84), recommending policies and measures to be adopted by States to enhance the protection of refugee children. In October 2007, UNHCR's Executive Committee adopted Conclusion number 107 on children at risk, which provides further guidance to improve the protection of children in emergencies, including refugee children.

### The Geneva conventions

Between the fourth Geneva convention, Protocol 1 and Protocol 2, there are more than twenty provisions that give special protection to children affected by armed conflict. Under international humanitarian law, both during international and internal armed conflicts, children benefit from protection on two levels: first, as members of the civilian population in general, and second, as a vulnerable category deserving specific protection.

Additionally, in terms of general principles, Article 77 paragraph 1 of Protocol 1 states that *'children are to be the object of special respect and shall be protected against any form of indecent assault. The parties to the conflict are to provide them with the care and aid they require.'* This protection is understood to be applicable for all children, without exception, who are victims of international armed conflict. Note that the same protection is accorded by Article 4.3 of Protocol 2 relating to the protection of victims of non-international armed conflicts.

### The Guiding principles on internal displacement

The responsibility for the protection of IDPs rests first and foremost with national governments and local authorities. Internally displaced children are entitled to enjoy the same rights and freedoms under national and international law as the rest of the country's citizens. However, in reality, displacement will generally entail deprivation of multiple rights and of vital services. In cases where governments are unable or unwilling to meet the needs of their internally displaced citizens, international organisations have at times assumed this role on an ad hoc basis.

The Guiding principles on internal displacement are a key reference for those working on behalf of displaced persons. These principles address all three phases of displacement: the norms applicable before internal displacement occurs (protection against arbitrary displacement), those that apply in actual situations of displacement,



and those that apply to return and reintegration. They consolidate into one document the legal standards relevant to the internally displaced, identifying and filling legal gaps that have been identified.

The principles are intended to be morally binding and should provide an authoritative statement of the rights and the guiding responses to the plight of the internally displaced. Reference can also be made to regional initiatives on IDPs: the Addis Ababa document on refugees and forced population displacements in Africa of 1994, and the San Jose declaration on refugees and displaced persons also of 1994. The African convention on the protection and assistance of internally displaced persons in Africa is also set to be adopted in 2009. The objectives of the convention are as follows.

- Promote and strengthen regional and national measures to prevent or mitigate, prohibit and eliminate root causes of internal displacement as well as provide for durable solutions.
- Establish a legal framework for preventing internal displacement, where possible, and protecting and assisting internally displaced persons in Africa.
- Establish a legal framework for solidarity, cooperation, promotion of durable solutions and mutual support between the State parties to combat displacement and address its consequences.

#### **Security Council resolutions on children and armed conflict**

Since 1999, the UN Security Council has adopted seven resolutions on children and armed conflict. These resolutions call on parties to conflict to refrain from recruiting or using children, to prepare concrete and time bound action plans for halting the recruitment and use of children and threaten sanctions for non-compliance. Resolution 1612 (2005) authorised the establishment of a mechanism for monitoring and reporting on grave violations of children's rights. This mechanism will be discussed in more detail in **Section 4**.

#### **International Labour Organization convention 182 (1999)**

International Labour Organization (ILO) convention 182 deals with the worst forms of child labour. ILO convention 182 Article 3 defines the worst forms of child labour as:

- child slavery
- the commercial sexual exploitation of children
- use of children for illegal activities
- any form of work which is likely to compromise the child's health, safety or morals, including children associated with armed groups and forces.

All countries that adopt ILO convention 182 are accountable for the child labour practices within their country. The convention requires that each State establish effective measures that prohibit and eliminate the worst forms of child labour.

#### **Rome statute of the International Criminal Court (1998)**

The International Criminal Court (ICC) is an important deterrent to the abuses against children, specifically the conscription, enlistment, or use in hostilities of children under the age of 15 years, which is defined as a war crime in the ICC statute. The statute also includes other important measures reflecting special concerns of children:



- recognises intentional attacks on educational institutions as a war crime
- provides special arrangements for children as victims and witnesses
- exempts children below the age of 18 from prosecution by the court.

Ultimately, the aim of the court is ensuring that there is accountability for crimes perpetrated in armed conflict, including violations against children.

#### **African charter of the rights and welfare of the child**

This charter is the first regional treaty to establish 18 as the minimum age for all compulsory military recruitment and participation in hostilities. It explicitly prohibits early marriages, and requests States to take appropriate measures to eliminate harmful social and cultural practices.

#### **Training material for this section**

**Exercise 1** Using the CRC in emergencies

**Exercise 2** The legal framework for special protection of children in emergencies

**Handout 1** The CRC

**Handout 2** Scenario and tasks

**Handout 3** International legal standards



## Section 3

### Child rights-based approaches

#### Key learning points

- Child rights-based approaches use the CRC as a starting point, particularly its four general principles, with the aim of securing long-term, measurable impact on children's lives.
- Child rights-based approaches can and should be applied in emergency settings.
- In applying child rights-based approaches, it is important to take a long-term perspective and understand that change may only occur gradually.

#### What are child rights-based approaches?

Adapted from *Getting it right for children: A practitioner's guide to child rights programming*. Save the Children, 2007.

Many organisations are moving towards child rights-based approaches to development, but it is also important to implement them in emergency contexts. Similar to human rights-based approaches, the goal of child rights-based approaches is the realisation of children's rights, with the CRC as the key framework for achieving this. Child rights-based approaches include a moral or legal obligation on the State and/or other statutory bodies to protect or assist. Many rights have developed from needs, but a rights-based approach adds legal and moral obligations and accountability. Equally, in a rights-based approach, the holders of the rights are encouraged and empowered to claim their rights. This means that they are not seen as objects of charity but rather those who are claiming their legal entitlements.

The defining characteristics of a child rights-based approach are as follows.

- The **CRC is used** as a **framework**. It provides legitimacy, a reference point and opportunities for engagement with its monitoring mechanisms.
- The **four general principles** of the CRC constitute a filter mechanism throughout an organisation's work. They focus attention on: issues of discrimination; the views of children; the mobilisation of resources to ensure children's survival and development; and decision-making processes that make children's best interests a primary consideration.
- **Children's perspectives are sought** recognising them as people with dignity and evolving capacities; that they are empowered and assisted to speak out, have their views heard and become an integral part of processes of change.
- **Duty bearers**, primarily the State, are identified and held to account.
- Attention is paid to the most **marginalised**, those whose rights are presently least assured and recognised.
- The overall goal is a measurable **impact on the lives of children** and their rights.
- A **long-term** perspective is taken, necessitating an analysis of trends, opportunities and capacities, while also addressing urgent and immediate rights violations.



- Evidence-based **advocacy** is used to increase the scale of impact on children, for example, through replication, policy change or increased resource allocation.
- Programmes operate at **all levels of society** ensuring links from one level to another in order to maximise impact.
- Processes are **participatory** (with a variety of stakeholders, including children and young people) and empowering.
- Work is done in **partnerships** (with for instance, the State, civil society groups, communities, the private sector) to bring about real change for children.

### Why are child rights-based approaches important in emergencies?

In theory, applying a child-rights framework in an emergency is no different from doing so in any other environment. In reality, however, working in emergencies and heightened insecurity presents a whole set of additional operational challenges and adapted responses. In fact, the setting provides an additional urgency to work from a child-rights framework. Fortunately, a growing acceptance of the rights-based approach as good humanitarian practice has emerged with donors and agencies, putting greater emphasis on accountability, participation, local capacity and ownership.

Child rights-based approaches should be applied in emergencies for two reasons: the international community, through a framework of rights and principles, has mandated that children should maintain their full range of rights in all situations; and the values and principles that underpin child rights-based approaches represent good humanitarian practice.

Applying a child rights-based approach in emergencies is rooted in a number of internationally accepted guiding frameworks. These include:

- international humanitarian law and the Geneva conventions
- refugee law
- international human rights instruments, including the UN charter and the CRC
- humanitarian standards, including:
  - the Code of conduct for the International Red Cross and Red Crescent Movements and NGOs in disaster relief (1994)
  - the Sphere Project humanitarian charter and minimum standards
  - the Inter-agency network for education in emergencies minimum standards for education in chronic crises and early reconstruction
  - the Paris principles and guidelines for children associated with armed forces or armed groups
  - the Humanitarian accountability project minimum standards
- international targets, including the Millennium development goals.

One such framework states that '*Persons affected by disasters should enjoy the same rights and freedoms under human rights law as others in their country and not be discriminated against*'.

*'Protecting persons affected by natural disasters' IASC Operational guidelines on human rights and natural disasters, 2006*



Other frameworks state that:

- children must maintain the full range of rights in all situations, irrespective of who they are (as clearly stated in the CRC and a host of other international human rights instruments and international humanitarian law)
- these rights are more at risk of being violated, left unprotected and unfulfilled the more fragile the situation
- duty bearers must continue to meet their responsibilities and obligations in all situations and in relation to all rights
- international conventions, charters and principles reinforce a rights-based approach in emergencies.

Using a child rights-based approach for emergency response also represents good humanitarian practice. It can ensure:

- impartiality
- protection of children against abuses of power
- children's participation as well as the participation of other beneficiaries is encouraged
- the most vulnerable children, their families and communities are targeted
- collaboration with and strengthening of civil society, giving this increasing priority as the humanitarian response progresses, is rooted in the initial analysis (CRSA, emergency preparedness plans and rapid assessment)
- the State is held to account to meet its obligations to children, their families and communities
- accountability to beneficiaries and other stakeholders, enabling their input into programming response and their feedback on impact.

For information on how to implement child rights-based approaches in programming, see **Foundation module 3** Programme design.

### **Rights-based approaches to children in conflict and disasters take various forms**

Below are some examples of how rights-based approaches have been applied in emergencies.

#### **Working with communities**

Experiences from Pakistan after the 2005 earthquake showed that active participation of communities in defining the response and its implementation process improved both its quality and speed.

- Communities are often the best judge of protection needs of children and vulnerable families. Involving them in relief operations can ensure maximum and sustainable protection of vulnerable children.





- Many indigenous social structures are protective of children. With some motivation and support, these structures can be mobilised to ensure protection of children without families or adult support.
- Lack of economic opportunities often forces families to place their children in risky situations, a reality which is only exacerbated in emergencies. By linking child protection initiatives with livelihood support children can be prevented from entering harmful child labour.
- Lack of access to school coupled with teachers' absenteeism keep children out of school. But more serious is families' attitude towards children's education. This needs to be addressed through massive community mobilisation campaigns.

In Nepal, Save the Children supported the establishment and capacity building of village (VCPC) and district level child protection committees (DCPC) during the armed conflict, and was also a member of the government-led Central Child Welfare Committee, which develop mandates for the lower-level child protection committees. The DCPC coordinated both government and NGO resources in the district and also compiled statistics on children at risk and received referrals from the VCPC. The latter identified injured and separated children and took measures to help them. They approached both sides in the conflict at a local level and appealed to them to respect the rights of children. They cooperated with children's clubs who were also represented in the VCPC. In the post war era, the VCPC are becoming a formal part of the national system, and are also turning their attention to all forms of violence against children.

In Cote d'Ivoire, Save the Children strengthened community mechanisms to tackle gender-based violence in emergencies through:

- training community-selected gender-based violence focal points and peer educators
- providing community sensitisation on causes and consequences of GBV
- working with communities to create referral systems.

While some villages have been more receptive than others, overall the programme has helped to highlight the issue and provoke discussion.

### Participation

Children's clubs in Sri Lanka, Uganda, Nepal, Sudan and elsewhere offer multiple examples of providing a platform for children's own initiatives. With the support of their peers, children have confronted armed forces on both sides on issues of recruitment, safe passage to school, and school occupation by forces. They have solicited help for their families, spread messages of peace and held discussions in their villages with adults on issues such as alcohol abuse and violence.

The review of Save the Children's response to the Pakistan earthquake in 2005 demonstrated that the establishment of forums for children's participation while responding to a mass scale emergency reduced the traumatic effect of emergency on children, rebuilt children's confidence in their abilities to take initiatives for common good, ensured quick identification of child protection and development needs and gave access to the most marginalised children and families.



### Non-discrimination

Save the Children constructed toilets with seats and bolts that were suited to the height of children in temporary camps and permanent shelters falling in its partners' area of operation in India (post 2004 tsunami). Toilets, and access paths to them, were also well lit so that children would not be afraid to use them. Where necessary, toilets were fixed with ramps and other infrastructure so that children with physical disabilities could use them.

Children of illegal Burmese migrants into Thailand did not have access to formal education even before the 2004 tsunami, while some dropped out post tsunami. Recognising this, Grassroots Human Rights Education (GHRE) initiated a migrant learning centre project. Children who have never been to Thai schools, as well as those who attend school irregularly, receive support to facilitate their integration into Thai schools. Children who participated in these learning centres expressed that they were less intimidated by Thai people because of their participation. However, not all Burmese migrant boys could be pulled out of child labour and brought back into the education system. GHRE is now reaching out to parents of such children to persuade them to enrol them.

### Capacity building

In January 2001, Save the Children provided the Congolese Army's 6th Brigade with training focussing on the CRC, international law and international humanitarian law prohibiting the recruitment of children, including its impact on children. The number of children demobilised in South Kivu that month had been five, the release figure for the following month was 68.

In Aceh, Indonesia, many children were separated from their families by the tsunami in December 2004. Save the Children set up a family-tracing database within the Ministry of Social Services in Aceh and seconded staff to the ministry to help build its capacity in managing the caseloads.

### Advocacy

Save the Children has worked closely with the Ivorian National Child Protection Commission to establish a national action plan for preventing and responding to child abuse. With the agency's encouragement, the commission decided to lobby the Ministry of Civil Service and Employment to hire psychologists to work with abused children in the country's social welfare centres. If successful it will represent the first time that psychologists are included in Cote d'Ivoire's civil service.

### Working in partnership

In 2005 in Darfur, UNICEF and Help-Age conducted a study on (among others) the relationship between elderly and children, which was the starting point for a more programmatic cooperation. Traditionally, older people in Darfur were highly esteemed by other members of their communities, including children and youth. Many older people still have significant contact with children, but their traditional role has become less dominant in IDP camps, leaving a growing gap between older and younger generations. Through the cooperation between Help-Age and UNICEF, elderly people became more involved in the child friendly spaces and the natural relationship was strengthened, rather than weakened.



As the above examples demonstrate, child rights-based approaches can and should be applied in emergencies, as they can lead to more sustainable interventions and better programming that works towards building societies that acknowledge and respect children's rights. However, it is important to point out that child rights-based approaches cannot make the impossible possible. They can help to make governments more accountable but there may still be issues around lack of resources or political will that hamper the full realisation of children's rights. Child rights-based approaches are long-term interventions that should be implemented with the understanding that results may be incremental.

**Training material for this section**

- Exercise 1** Exploring child rights-based approaches in emergencies
- Handout 1** Needs compared with rights
- Handout 2** Why choose a rights-based approach?



## Section 4

### The CRC and child rights monitoring

#### Key learning points

- State parties to the CRC are obligated to report on progress they've made towards its implementation, which can provide useful material for advocacy or situation analysis for those countries under review.
- Reporting to the committee provides NGOs a unique opportunity to bring concerns about the status of children to the international legal body responsible for monitoring the implementation of the CRC.
- The UN Security Council responds to grave violations of children's rights in armed conflict situations.

#### CRC monitoring

The international system of human rights includes mechanisms for holding States to account for their commitments, and providing the means by which individuals can raise issues about their rights. Complaints mechanisms are established by a number of international treaties, for example, the International covenant on civil and political rights, and the Convention for the elimination of all forms of discrimination against women provide such facilities. Ratification of a human rights treaty also means that the State consents to be obligated to periodically report on progress in realising the rights.

Although efforts are ongoing to establish an individual complaints mechanism for the CRC, the current system of monitoring of progress in achieving children's rights is found in Article 44. Through the office of the Committee on the Rights of the Child (established under Article 43) a country's progress in achieving its commitments is subjected to periodic scrutiny, albeit in a supportive rather than adversarial way.

#### Article 44

- 1** States parties undertake to submit to the committee, through the Secretary General of the UN, reports on the measures they have adopted which give effect to the rights recognised herein and on the progress made on the enjoyment of those rights:
  - a** within two years of the entry into force of the convention for the State party concerned
  - b** thereafter every five years.
- 2** Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present convention. Reports shall also contain sufficient information to provide the committee with a comprehensive understanding of the implementation of the convention in the country concerned.
- 3** A State party which has submitted a comprehensive initial report to the committee need not, in its subsequent reports submitted in accordance with



paragraph 1(b) of the present article, repeat basic information previously provided.

- 4 The committee may request from States parties further information relevant to the implementation of the convention.
- 5 The committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.
- 6 States parties shall make their reports widely available to the public in their own countries.

The Committee on the Rights of the Child produced guidelines in 1996, which have been updated in 2005 (CRC/C/58/Rev.1 29 November 2005), on how to construct initial and then periodic reports. In its review of country reports, the committee urges all levels of government to:

- ensure all legislation is fully compatible with the CRC
- develop a detailed, comprehensive national strategy or agenda for children, based on the CRC
- develop permanent mechanisms in government to ensure effective coordination, monitoring and evaluation of implementation
- ensure that there is a systematic process of child impact assessment
- carry out adequate budget analysis for children
- ensure sufficient data collection on the state of children
- ensure awareness of children's rights among adults and children and disseminate reports under the CRC
- promote cooperation and coordination with civil society including professional associations, non-governmental organisations and children
- promote international cooperation in implementation
- develop independent offices to promote children's rights, children's ombudspersons or commissioners for children.

Reports to the committee are organised into eight clusters of rights. The present guidelines group the articles of the CRC in clusters with a view to assisting States parties in the preparation of their reports. This approach reflects the holistic perspective on children's rights taken by the CRC, ie. *'that they are indivisible and interrelated and that equal importance should be attached to each and every right recognised therein.'*

- 1 **General measures of implementation** Articles 4, 42, 44(6)
- 2 **Definition of the child** Article 1
- 3 **General principles** Articles 2, 3, 6, 12
- 4 **Civil rights and freedoms** Articles 7, 8, 13, 14, 15, 16, 17, 19, 37(a)
- 5 **Family environment and alternative care** Articles 5, 9, 10, 11, 18, 20, 21, 25, 27(4), 39



- 6 **Basic health and welfare** Articles 18, 23, 24, 26, 27
- 7 **Education, leisure and cultural activities** Articles 28, 29, 31
- 8 **Special protection measures** Articles 22, 30, 32, 33, 34, 35, 37, 38, 39, 40

The committee's guidance also includes recommendations as to appropriate consultative process (involving children as well as adults, civil society as well as State, with provision for technical reports from specialist UN agencies), and requirements to publish and make known the findings from its review. The process of submitting a report and its hearing also allows for non-State actors to interact with the committee, both through the submission of alternative or supplementary reports and also by meeting with the committee before its interaction with the State.

Reporting to the committee provides NGOs a unique opportunity to bring concerns about the status of children to the international legal body responsible for monitoring the implementation of the CRC. Reporting can also empower national NGOs by offering a legitimate external source to which children's issues can be raised and addressed. At national level, the preparation of an NGO report encourages and facilitates public scrutiny of governmental policies and provides NGOs with a way in which to influence the agenda of the country. It opens a debate on the status of children in the country and creates an opportunity to have a serious dialogue with senior government officials about the State's efforts to comply with the CRC.

The NGO group for the CRC has developed a Guide for non-governmental organisations reporting to the Committee on the Rights of the Child (2006), which provides up-to-date information on the procedures for the examination of reports submitted under the CRC and its optional protocols. The guide is available in several languages and can be accessed from <http://www.childrightsnet.org/>

The reports that have been submitted by governments, and supplementary and alternative reports submitted by civil society provide a quick source of information on the State's progress in achieving children's rights. These can be accessed at the UN's treaty body database ([www.unhcr.ch](http://www.unhcr.ch)) and the Child Rights Information Network ([www.CRIN.org](http://www.CRIN.org)) website respectively.

### **Monitoring and reporting on grave violations against children in armed conflict**

*Much of this section is adapted from unpublished material developed by UNICEF.*

The UN Security Council responds to violations of children's rights in armed conflict situations and has it as a standing thematic issue on its agenda. In fact, it is the only human rights issue on the council's agenda with a special working group to regularly review the situation. UN Security Council resolution 1612, adopted in 2005, authorised the implementation of a mechanism for monitoring, reporting on and holding to account armed forces and armed groups responsible for grave violations against children in conflict. The mechanism monitors six grave violations by government forces and non-State actors, focusing especially on recruiting children in violation of international instruments, killing and maiming of children, rape and other sexual violence mostly committed against girls, abduction and forced displacement, denial of humanitarian access to children and attacks against schools and hospitals. Ultimately, the purpose of the monitoring and reporting mechanism (MRM) is to prevent, respond to, diminish and end grave violations against children by armed forces or armed



groups in conflict situations and to ensure accountability of perpetrators through the collection of timely, objective, accurate and reliable information.

Resolution 1612 authorised the establishment of a working group comprised of all 15 Security Council members, who are responsible for monitoring the implementation of this and its previous resolutions on children and armed conflict.

### **The structure of the monitoring and reporting mechanism**

#### **Security Council**

The Security Council Working Group on children and armed conflict (SCWG CAAC) meets roughly every other month and is mandated to:

- review country reports of the MRM (generally two countries covered per session)
- review progress in the development and implementation of action plans (as mentioned in Resolution 1539 and Resolution 1612)
- make recommendations to the full Security Council on possible measures to promote the protection of children affected by armed conflict, including recommending appropriate mandates for peacekeeping missions and recommendations regarding parties to the conflict
- address requests to other bodies within the UN system for action to support Security Council resolution 1612
- consider other relevant information presented to it.

#### **NY headquarters level**

The steering committee on MRM is comprised of UN agencies, led by the Office of the Special Representative of the Secretary General for children affected by armed conflict (SRSR CAAC) and UNICEF:

- develops guidelines and other tools to support the implementation of the MRM
- provides technical support to the in-country task force
- reviews and comments on reports received from the field
- assesses progress on the implementation of the MRM.

#### **Country level**

The country task force on monitoring and reporting (MRM TF) is chaired by the highest ranking UN authority in the country (generally either the resident coordinator or the special representative of the Secretary General if there is a peacekeeping operation). Its duties include monitoring violations and reporting to the Office of the SRSR CAAC.

The specific objectives of the MRM are:

- to contribute to the analysis of the situation of children and armed conflict
- to facilitate and trigger local, national, regional and international responses
- to assist in mainstreaming of systematic approaches and strengthening networks for the prevention, monitoring, reporting and response to grave violations
- to inform policy development and programme design for prevention and response activities.



### Which countries can participate in the MRM?

#### Situations on the Security Council work plan

- The Security Council Working Group identifies those countries experiencing armed conflict for which the formal Security Council MRM must be implemented, based on the situations listed in Annex 1 of the annual Secretary General's report on Children affected by armed conflict; and discusses the participation with States whose situation is listed on Annex 2.
- The Security Council invited all States affected by armed conflict which are experiencing grave violations or children's rights and protections under international law to voluntarily participate in the MRM.<sup>2</sup>

#### 13 countries currently on the UN Security Council list and mandated to report every two months (as of September 2009)

Afghanistan, Nepal, Burundi, Philippines, Central African Republic, Somalia, Chad, Sudan, Democratic Republic of Congo, Sri Lanka, Iraq, Uganda, Myanmar.

Cote D'Ivoire has been de-listed but still reports.

#### Note on the Security Council work plan

- Any UN country team can start a MRM without being on the work plan of the Security Council Working Group if it decides that it would be beneficial to protect children against grave violations.
- Those countries implementing a MRM that are not on the Security Council Working Group work plan can contribute inputs to the global horizontal note and will not submit a specific annual country report.

#### Voluntary countries (as of September 2009)

Haiti, Occupied Palestinian Territory, Lebanon, Thailand.

#### NGO participation in the MRM

At global level INGOs:

- collaborate on development of guidelines, training and annual country reports.

At country level:

- both international and national NGOs participate in most MRM TFs around the world
- prevention and response to violations.

There are many ways that information collected by the MRM can be used. Some examples are:

- 1612 bi-monthly reports to the Security Council Working Group
- annual report of the Secretary General on children and armed conflict
- reporting to EU committee for children affected by armed conflict
- feed into CRC monitoring committee and other treaty bodies
- child protection networks at district, national, regional and global level
- programme responses
- informs needs analyses and the consolidated appeals process





- informs governments and multi-lateral entities
- information to donors
- inputs to regular child and human rights reports
- can provide for evidence based advocacy with State and non-State actors
- informs UN bodies and other international organisations.

Child rights are monitored through both the reporting done by States to the Committee on the Rights of the Child and reports to the Security Council through the MRM established by Resolution 1612. Both mechanisms provide concrete ways to hold States, as the primary duty bearer, accountable for the commitments they've made to respect, protect and fulfil the rights of the child. The MRM also seeks to hold armed groups accountable for violations of children's rights in armed conflict.

#### Training material for this section

- Exercise 1** Monitoring and reporting the CRC
- Exercise 2** Quiz on the monitoring and reporting mechanism (MRM)
- Handout 1** State responsibility for rights and reporting
- Handout 2** The cycle of reporting to the UN Committee on the Rights of the Child
- Handout 3** The CRC reporting process
- Handout 4** What do you know about the MRM?



## Endnotes

- 1** On 10 December 2008, the General Assembly unanimously adopted an optional protocol (GA resolution A/RES/63/117) to the International covenant on economic, social and cultural rights which provides the committee competence to receive and consider individual communications. The optional protocol is not yet in force, as it will be opened for signature at a signing ceremony in 2009.
- 2** *What is international humanitarian law?* ICRC  
[www.icrc.org/Web/eng/siteeng0.nsf/htmlall/humanitarian-law-factsheet/\\$File/What\\_is\\_IHL.pdf](http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/humanitarian-law-factsheet/$File/What_is_IHL.pdf)
- 3** Statement by the president to the Security Council, 28 November 2006.



## Further reading

### International legal framework

- <http://www2.ohchr.org/english/law/>
- International covenant on civil and political rights
- International covenant on economic, social and cultural rights
- UN Security Council resolutions:
  - UN document S/RES/1261 *Security Council resolution 1261* (1999)
  - UN document S/RES/1314 *Security Council resolution 1314* (2000)
  - UN document S/RES/1379 *Security Council resolution 1379* (2001)
  - UN document S/RES/1460 *Security Council resolution 1460* (2003)
  - UN document S/RES/1539 *Security Council resolution 1539* (2004)
  - UN document S/RES/1612 *Security Council resolution 1612* (2005)
- UN document S/RES/1674 *Security Council resolution 1674* (2006)
- Universal declaration of human rights

### UN Conventions on the rights of the child

- *The African charter of the rights and welfare of the child* OAU Doc. CAB/LEG/24.9/49 (1990)
- *The Optional protocol on the involvement of children in armed conflict* UN document A/RES/54/263 (2000)
- *The Optional protocol on the sale of children, child prostitution and child pornography* UN document A/RES/54/263 (2000)
- *UN Convention on the rights of the child* UN document A/44/49 (1989)
- *Worst forms of child labour convention* International Labour Organization convention 182 (1999)

### The Geneva conventions (1949)

- *Convention 1 for the amelioration of the condition of the wounded and sick in armed forces in the field* Geneva
- *Convention 2 for the amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea* Geneva
- *Convention 3 relative to the treatment of prisoners of war* Geneva
- *Convention 4 relative to the protection of civilian persons in time of war* Geneva

### The two additional protocols to the Geneva conventions (1977)

- *Protocol additional to the Geneva conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts* Protocol 1
- *Protocol additional to the Geneva conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts* Protocol 2



Further reading

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**Other guidelines, principles and documents**

- Committee on the Rights of the Child general guidelines regarding the form and content of periodic reports to be submitted by States parties under Article 44, paragraph 1(b). Adopted by the committee at its thirty-ninth session on 3 June 2005
- *Conclusion on refugee children and adolescents no. 84 (XLVIII)* UNHCR, 1997
- *Document EC/SCP/82 UNHCR Policy on refugee children* UNHCR, 1993
- *Final report A/51/306: The United Nations study on the impact of armed conflict on children* Machel G, (expert of the Secretary General of the UN) Machel Report 1996
- *Guiding principles on internal displacement* UN, 1998
- *Refugee children: guidelines on protection and care* UNHCR, Geneva 1994
- *UNICEF Programme policy and procedures manual (PPPM)* UNICEF, 2007

**Further reading**

- *A guide for non-governmental organisations reporting to the Committee on the Rights of the Child* the NGO group for the CRC, Geneva 2006 third edition
- *Frequently asked questions on a human rights-based approach to development cooperation* Office of the High Commissioner for Human Rights 2006  
<http://www.un.org/depts/dhl/humanrights/toc/toc9.pdf>
- *Getting it right for children* Save the Children Alliance
- *The human rights framework for development: seven approaches* Marks SP, 2003
- *Turning principles into practice* Petren A and Hart R (editors) UNICEF ROSA and Save the Children Sweden, 2002
- *UN Common learning package on human rights-based approach (HRBA)*  
<http://www.undg.org/index.cfm?P=531>
- *UN Common understanding on rights-based approaches to development*  
[http://www.undg.org/archive\\_docs/6959The\\_Human\\_Rights\\_Based\\_Approach\\_to\\_Development\\_Cooperation\\_Towards\\_a\\_Common\\_Understanding\\_among\\_UN.pdf](http://www.undg.org/archive_docs/6959The_Human_Rights_Based_Approach_to_Development_Cooperation_Towards_a_Common_Understanding_among_UN.pdf)
- *UN Convention on the rights of the child: an International Save the Children Alliance training kit* International Save the Children Alliance, London 1997
- *UNHCR Best interests determination guidelines*

**Websites**

- Committee on the Rights of the Child  
<http://www2.ohchr.org/english/bodies/crc/index.htm>
- International Committee of the Red Cross  
[www.icrc.org](http://www.icrc.org)  
(The ICRC site is helpful for referencing the humanitarian provisions, commentary and detail of their activities and documents in this area.)
- Office of the High Commissioner for Human Rights  
[www.ohchr.org](http://www.ohchr.org)  
(Provides information on key human rights treaties, including CRC observations through the Committee on the Rights of the Child.)



**Further reading**

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- Special representative of the Secretary General for children and armed conflict  
[www.un.org/special-rep/children-armed-conflict/fsoldiers.htm](http://www.un.org/special-rep/children-armed-conflict/fsoldiers.htm)  
(Gives a brief explanation on issues of children associated with armed forces or armed groups along with a highlight on the optional protocol. Also mission reports and documents dealing with children in armed conflicts in general and children associated with armed forces or armed groups especially.)
- UNICEF  
[www.unicef.org](http://www.unicef.org)  
(Provides details of the optional protocol to the CRC on the involvement of children in armed conflict, along with information on the recently adopted Security Council resolution 1314 on children and war.)

