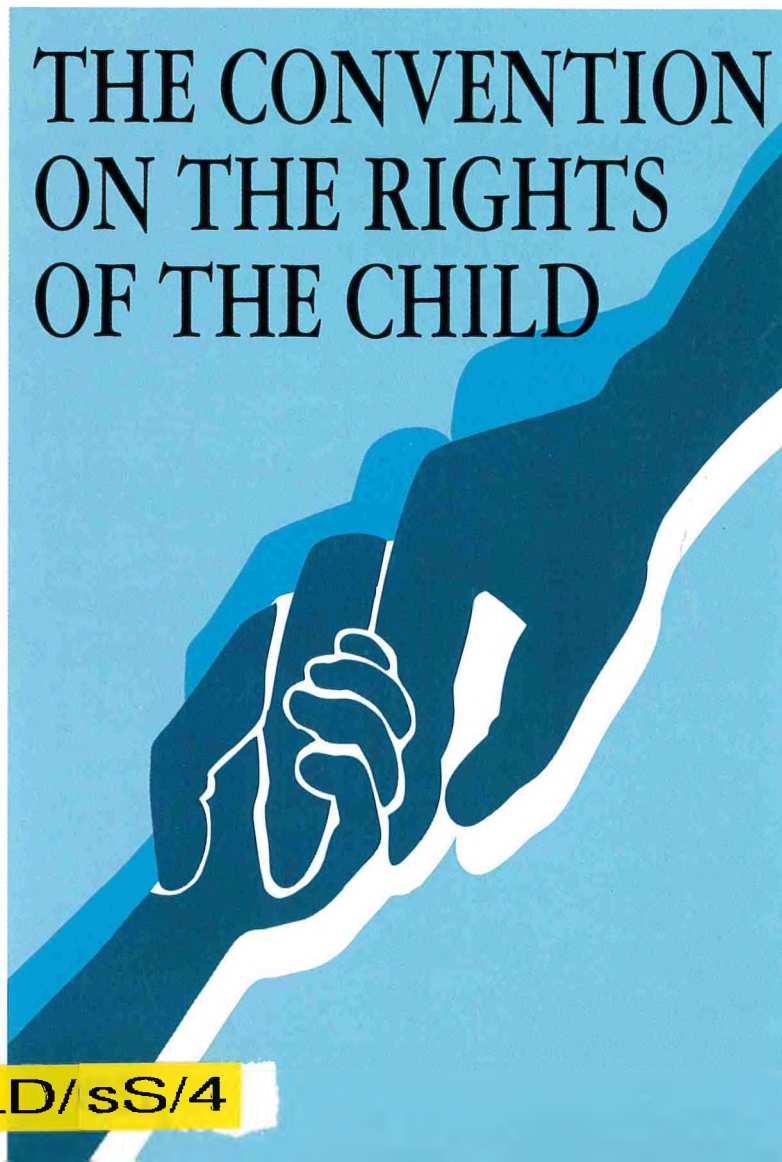


QUESTIONS AND ANSWERS ON

THE CONVENTION ON THE RIGHTS OF THE CHILD



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United Nations
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Foreword

In autumn 1989, at its 44th session, the United Nations General Assembly will have before it for adoption a draft Convention on the Rights of the Child. This proposal is the result of a long drafting process where governments, U.N. specialized agencies and non-governmental organizations together strived to create a comprehensive treaty for the protection of the rights of the child.

Throughout the years, as the draft Convention was being worked out, the overwhelming support for the project was manifested in all sectors of the international community, governmental as well as non-governmental. The international media closely followed the preparatory work.

If the rights formulated in this Convention are to find a meaningful application, wide public knowledge is essential. This booklet is the result of close cooperation between UNICEF and the Centre for Human Rights. We have tried to address the more frequently asked questions about the Convention and its future role in the protection of the child.

It is my hope that through this booklet, which is published within the framework of the World Campaign for Human Rights, a wide audience will gain an understanding of the rights enshrined in this new Convention, their implementation and what the United Nations will be doing to promote and protect them.

Jan Martenson

Under-Secretary-General for Human Rights

The drafting of a Convention on the Rights of the Child has brought an outpouring of support from governments and sparked the interest of the international media.

This booklet addresses some of the more frequently asked questions about the Convention and its future role in the protection of children everywhere.

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QUESTIONS AND ANSWERS ON THE CONVENTION ON THE RIGHTS OF THE CHILD*



IF EXISTING HUMAN RIGHTS CONVENTIONS PROTECT CHILDREN AS WELL AS ADULTS, WHY IS THERE A NEED FOR A SEPARATE CONVENTION ON THE RIGHTS OF THE CHILD?

Although children are covered by current conventions, the provisions relevant to them are scattered over a wide range of international treaties which do not take their special needs sufficiently into consideration.

The Convention on the Rights of the Child has been drafted to reflect the needs of children not only as a group, but as individuals at different stages of development and maturity. It is remarkable in that it

not only draws together, in a single document, the key provisions of existing human rights law affecting children but also breaks new ground in key areas including adoption, survival and development, protection of the child's identity, sexual exploitation, neglect, and drug abuse. It will be the most comprehensive treaty for the protection and support of children in history.

HOW DOES THE CONVENTION DEFINE A CHILD?

The first article of the Convention states that every person under the age of 18 years is a child. However, this age limit is not absolute. Exceptions can be made for persons who, under national laws, reach the age of majority earlier.

* The draft convention is expected to be approved by the General Assembly at its 44th session, September-December 1989.

DOES THE CONVENTION TAKE A POSITION ON THE ISSUE OF THE UNBORN CHILD?

The drafting process revealed a wide variety of approaches to this issue; therefore the Convention leaves it to each nation to decide for itself, within the contexts of its own culture, traditions and religion, how it will approach the issue of protection of the unborn child.

Article 6 of the Convention states that every child has the inherent right to life. Furthermore, the Preamble of the Convention, drawing on the Declaration of the Rights of the Child, states that: "the child by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth."

The issue of the protection of the unborn child will be approached within the framework of the Convention's provisions and the context of the culture, tradition and religion of each State Party.

WHAT DOES THE CONVENTION HAVE TO SAY ABOUT THE ROLE OF THE FAMILY IN CARING FOR THE CHILD?

The Convention recognizes the importance of the family as the primary social group and the natural environment for the growth and well-being of children. It maintains that the family should have the necessary protection and assistance to fulfill this responsibility, and that children should remain with their parents, except when it is in their best interests not to do so in cases of parental abuse or neglect.

In situations where the parents are living separately and a decision must be made as to the child's place of residence, the Convention requires that decision to be made by competent authorities in accordance with national laws and procedures. The child has the right to maintain personal relations and direct contact with both parents on a regular basis, unless this is found to be contrary to the child's best interests. The Convention endorses the international transit rights of children and parents for the purpose of family re-unification.

DOES THE CONVENTION SEEK TO PROTECT CHILDREN AGAINST VIOLENCE AND ABUSE IN THE FAMILY?

The child has the right to protection against all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse while in the care of the family. Countries which sign the Convention are required to take all the appropriate legislative, administrative, social and educational steps to ensure that the child has this protection, and to investigate and follow up on reported cases of child maltreatment.

ARE THERE SPECIAL SAFEGUARDS FOR THE CHILD IN CASES OF ADOPTION?

In States that allow adoption, the government must ensure that it is authorized only by competent authorities. The authorities must determine the child's status on the basis of reliable information concerning parents, relatives and legal guardians, who have given consent after appropriate counselling.

The Convention recognizes that intercountry adoption might be an alternative solution if adoptive or foster parents cannot be found, or if the child cannot be cared for in a suitable manner in its own country. In such cases, the Government should make certain that there are adoption standards and safeguards equal to those in the child's own country, and that no one makes an improper financial gain from organizing the adoption or placement of the child.

HOW DOES THE CONVENTION APPROACH THE QUESTION OF CHILD LABOUR?

Parties to the Convention must recognize the child's right to protection from economic exploitation and from performing work that is likely to be hazardous, or to interfere with the child's education. States are expected to take the necessary legislative, administrative, social and educational measures to achieve this.

IS THE CHILD PROTECTED AGAINST SEXUAL ABUSE?

States Parties are obliged to protect the child from all forms of sexual exploitation and sexual abuse, and to take all measures - national, bilateral and multilateral - to prevent:

- the inducement or coercion of a child to engage in any unlawful sexual activity,
- the exploitative use of children in prostitution or other unlawful sexual practices,
- the exploitative use of children in pornographic performances and materials.

DOES THE CHILD HAVE THE RIGHT TO EXPRESS HIS OR HER VIEWS?

Yes, this is one of the guiding principles of the Convention. It obliges States to give due weight to the views of the child in accordance with his or her age and maturity. This applies especially in any judicial or administrative proceedings affecting the child.

DOES THE CONVENTION SAY ANYTHING ABOUT A CHILD'S RIGHT TO FREEDOM OF RELIGION?

States Parties to the Convention are required to respect the right of the child to freedom of thought, conscience and religion, and to respect the rights and duties of the parents or legal guardians to provide direction to the child in these matters.

WHAT PROTECTION DOES THE CHILD HAVE AGAINST INTERFERENCE BY THE STATE IN HIS OR HER PERSONAL LIFE?

The Convention states that no child should be subjected to arbitrary or unlawful interference with his or her privacy, family, home, or correspondence. Nor should the child be subject to unlawful attacks on his or her honour and reputation.

ARE THERE SPECIAL RIGHTS WHICH APPLY TO CHILDREN IN ARMED CONFLICTS?

International provisions, including numerous articles of the 1949 Geneva Conventions and the 1977 Additional Protocols, apply specifically to children and their mothers, and aim to provide them with special protection and relief. The Convention on the Rights of the Child calls on States to ensure respect for the rules of humanitarian law which are relevant to the child, and to take all feasible steps to ensure that children under 15 years of age do not take a direct part in fighting. Accordingly, States should not recruit anyone under 15 years into the armed forces.

DOES THE CONVENTION DEAL WITH CHILDREN WHO ARE IN TROUBLE WITH THE LAW?

Yes. The aim is to secure for the child who is in conflict with criminal law, treatment which is consistent with the child's human rights and with his or her age and maturity, and which focuses on the child's re-integration into society.

DO GOVERNMENTS TAKE NOTICE OF INTERNATIONAL LAW IN GENERAL, AND OF INTERNATIONAL HUMAN RIGHTS TREATIES IN PARTICULAR?

Our daily existence is regulated by international law to a far greater extent than most of us realize. Nations and corporations conduct much of their business in ways which are carefully designed to satisfy the requirements of international law. Many of the foods we eat are covered by international health, consumer and trade laws, and a free flow of such commodities would be impossible without them. International travel is possible because of international laws governing the immunization of individuals, and rules of conduct for shipping and aviation.

Although the issues are different, human rights treaties are in much the same category as these other international arrangements. They are drafted by the representatives of States working through international organizations, and they are subsequently ratified by each State on an individual and voluntary basis.

Once these standards are in place, they become benchmarks for behaviour, and citizens can refer to them and work to persuade the State to abide by them. Courts, officials, and individuals concerned with child welfare can apply the standards wherever possible, and international agencies can also use them to reinforce their advocacy on behalf of children.

Violations of international human rights, and other standards, do occur, however. This fact indicates that society must use whatever means are available to put an end to violations, and promote respect for the law.

HOW WILL THE CONVENTION BE IMPLEMENTED?

A Committee on the Rights of the Child will be established with 10 experts serving in their personal capacities. States which agree to observe the Convention will report to the Committee on the steps they have taken to comply with it, as well as on progress towards human rights for their children. The Convention requires States to ensure that the principles and provisions of the Convention are widely known, and to see that their reports to the Committee on the Rights of the Child are made public.

In the global effort to encourage effective implementation of the Convention:

- the Centre for Human Rights and other United Nations bodies may provide technical assistance and expert advice, and the Committee might invite them to prepare expert reports;
- the Committee may consider requests from States for technical advice or assistance in meeting their obligations under the Convention;
- the Committee might request the UN Secretary-General to undertake studies relating to the rights of the child;
- the Committee may make suggestions and recommendations, based on the information it receives from individual States.

WHAT OBLIGATIONS DO STATES HAVE TO ENSURE THE SURVIVAL AND DEVELOPMENT OF THE CHILD?

Among the new human rights principles introduced in this convention is the States obligation to ensure the survival and development of every child. This means that States are legally bound to do everything possible to prevent child mortality and disability.

These principles are underlined in articles regarding the right to the highest standards of health. Included are access to facilities for treatment of illness and information on nutrition and prevention of diseases. Provisions for necessary health care for expectant mothers and all other kinds of preventive health care are highlighted too. Other articles deal with the emotional, intellectual and social development of the child.

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WHAT IS TO BE DONE FOR CHILDREN WHO BECOME REFUGEES?

A child who is a refugee or who seeks refugee status, with or without parents, has the right to receive protection and humanitarian assistance. The child shall receive assistance to trace the parents or other family members to facilitate re-unification.

When family cannot be found, the child should be accorded the same protection as other children temporarily or permanently deprived of a family.

WHAT DOES THE CONVENTION SAY ABOUT THE RIGHT TO EDUCATION?

A child has the right to education on the basis of equal opportunity. Particularly emphasized is:

- making compulsory primary education available to all and taking measures to encourage regular attendance at schools and reduce drop-out rates,
- encouraging development of different forms of secondary education, including general and vocational education,
- making higher education accessible to all on the basis of capacity, and
- making educational and vocational information and guidance available and accessible to all children.

Recognizing that many countries are unable to fulfill this obligation due to financial constraints, the Convention says that this right may be achieved progressively. Also encouraged is international co-operation in education, in particular to eliminate ignorance and illiteracy throughout the world and to facilitate access to scientific and technical knowledge as well as modern teaching methods.

DOES THE CONVENTION SAY ANYTHING ABOUT THE VALUES TO BE INSTILLED IN A CHILD'S EDUCATION?

Education should be directed at developing the child's personality and talents, preparing the child for active life as an adult, fostering respect for basic human rights and developing respect for the child's own cultural identity, language and values, and those of others.

WHEN DOES THE CONVENTION ON THE RIGHTS OF THE CHILD BECOME INTERNATIONAL LAW?

The Convention enters into force when 20 nations have ratified it.

Centre for Human Rights
United Nations Office at Geneva
8-14 Avenue de la Paix
1211 Geneva 10
Switzerland

UNITED NATIONS CHILDREN'S FUND
Unicef House,
Three United Nations Plaza
New York, NY 10017
USA

New York Office
Centre for Human Rights
United Nations
New York, NY 10017, USA

UNICEF Geneva Office
Palais des Nations
1211 Geneva 10
Switzerland