

## INNOCENTI RESEARCH CENTRE

### The General Measures of the UN Convention on the Rights of the Child The Process in Europe and Central Asia

#### EXECUTIVE SUMMARY

##### Background

The almost universal ratification of the Convention on the Rights of the Child (CRC) and its widespread implementation in countries with different political, economic and social contexts has led to a process of social change unique in the history of UN treaties.

To document this process and support work being done in the area of child rights, UNICEF Innocenti Research Centre is conducting a 62-country study on the CRC implementation. The study focuses on "general measures of implementation" of the CRC – concrete, cross-cutting measures that support the implementation process as a whole and are necessary to ensure that the principles and provisions of the Convention become a reality in the lives of children.

The countries under review were selected to represent all regions of the world. Each of these countries has reported at least twice to the Committee on the Rights of the Child (the Committee) – the international expert body established by the CRC to monitor progress in the implementation of this human rights treaty. This is an ongoing research study that will be further developed in the years ahead.

This report has been developed in the light of the reality of children in European countries, including Austria, Belarus, Belgium, Bosnia and Herzegovina, Croatia, Cyprus, Czech Republic, Denmark, Finland, France, Georgia, Germany, Greece, Iceland, Italy, Latvia, Lithuania, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Slovenia, Spain, Sweden, the Former Republic of Macedonia, Ukraine and the United Kingdom.

Four "general measures" are reviewed in this report:

1. The process of law reform.
2. Establishment of independent human rights institutions for children.
3. The development of mechanisms to coordinate implementation of the CRC; and,
4. Monitoring progress on implementation of the CRC.

##### **Law reform and implementation of the CRC**

A crucial step in the implementation process is to ensure that national laws are fully compatible with the CRC. States are expected to recognize in national law the rights and principles of the CRC, develop corresponding programmes and infrastructure, and provide guidance to ensure children's rights are fully recognized and protected.

*The CRC has been incorporated into the national law of most of the countries whose legislation was reviewed.* In some countries, specific legislation was adopted to safeguard children's rights. In other countries, the CRC was incorporated automatically by constitutional principles. In fact, many of the new constitutions developed in Central and Eastern Europe over

the past 15 years contain relatively generous provisions concerning the rights of the child, demonstrating the extraordinary impact the CRC has had in the legal order of the countries of this part of the world. In contrast, only two of the Western European countries studied (Belgium and Iceland) have amended their constitutions to add new provisions on the rights of children.

*All of the countries studied have made substantial changes in their legislation to better protect the rights of children.* Most countries have preferred a 'sectoral' approach to law reform, which involves a gradual review and modification of existing laws in particular areas, such as family law, child protection, and juvenile justice, to ensure their compatibility with the CRC. Other countries have adopted codes or 'comprehensive' laws – laws that incorporate most of the rights and principles covered by the CRC and that also include procedures for protecting these rights and responsibilities of different actors, including the State, local government, parents.

Each of these approaches to law reform, comprehensive or sectoral has its merits, and neither is sufficient on its own. The gradual reform of existing legislation tends to overlook civil rights, such as the right of the child to registration at birth, privacy, freedom of thought, and religion. When existing laws are reformed, principles, such as the obligation to respect the views of the child and the prohibition of discrimination on all grounds, tend to be recognized only in specific contexts. On the other hand, adopting comprehensive laws without identifying and modifying ordinary legislation that conflicts with the CRC can seriously undermine the effectiveness of the new laws.

*New legislation cannot alone guarantee the protection of children's rights.* States must develop corresponding programmes and institutions. They must adopt regulations that provide guidance to public authorities and civil servants as to how the law should be applied in practice. They must allocate necessary resources to ensure that laws are fully implemented. This comprehensive approach ensures that the legislature, the executive and the courts are all engaged in the effort to safeguard the rights of children.

*Two major challenges still remain in the law reform process: gaps in legislation and difficulties in enforcement.* Legislation in force must continue to be reviewed to fill in gaps, and amendments or new laws will be needed to ensure that legislation adequately protects *all* the rights of *all* children. Ensuring that new legislation is fully implemented requires a long-term commitment to developing, financing and implementing programmes that protect the rights of children. It also requires training and retraining public servants whose activities affect children, such as teachers, paediatricians, social workers, psychologists, police and other law enforcement personnel. The general public must be educated about the importance of child rights so that attitudes and values that foster violations of the rights of children are changed. Finally, independent mechanisms must be developed to promote and protect the rights of children, and to document and monitor the actual situation of children and the impact of laws and programmes designed to protect their human rights.

### **National Independent Institutions for the protection of children's rights**

Children's human rights institutions can play a vital role in ensuring that children's rights are taken seriously at all levels of government and in all sectors of society. Their independence allows them to identify gaps and shortcomings in the activities undertaken by public agencies, and to address issues that may not be a government priority. Their broad mandate and unique focus on children's rights allows them to develop a high degree of expertise and knowledge in

areas that cut across inter-agency and inter-disciplinary boundaries. The combination of independence and expertise lends weight to their advocacy role.

***The number of national independent institutions whose purpose is to protect and promote the rights of children has grown rapidly over the last 15 years***, representing an important development in the process of implementation of the CRC. The spread of children's rights institutions has been most rapid in Europe, where 35 independent national institutions with a separate statutory mandate for children now exist at the national and sub-national levels.

***The role, structure and working methods of these institutions vary considerably and continue to evolve.*** In a few European countries (e.g. Albania, Bosnia and Herzegovina, Latvia), general ombudspersons or national human rights institutions have established separate units specialized in child rights; in other countries (e.g. Portugal) institutions have created a focal point for child rights. Some countries in Europe (e.g. Italy, The Russian Federation) have focused on the establishment of child rights institutions at the regional and/or municipal level. In most cases, the specific mandates and functions of these institutions are defined by national law and the CRC.

***The purpose of all such institutions is to promote and safeguard the rights of children, but many institutions are mandated to perform other functions as well.*** Some promotional activities are intended to make the public at large aware of children's rights, while others address specific issues and direct their efforts to networks and institutions. Several child rights institutions are mandated to assess the situation of children and prepare studies and publish reports on the general situation of child rights in the country. The main function of some institutions is to provide children with a channel for making their views known to public officials and society at large.

***The investigation of complaints of child rights violations by a public authority who seeks a rapid, negotiated and appropriate solution at no cost to the complainant is an important dimension of 'ombudswork.'*** Most child rights institutions investigate individual complaints and situations affecting particular groups of children, including children in care, children with disabilities and children belonging to minorities. Although the scopes of the investigative mandates of such institutions vary considerably, the trend is towards broader mandates that cover both public and private actors. As a rule, children's ombudsmen and commissioners may receive both complaints made by children and complaints made on their behalf.

Few efforts have been made to objectively evaluate the accomplishments of children's human rights institutions. Comparative studies of the mandates, infrastructure and activities of existing institutions and evaluations of their achievements are needed to improve their work and promote their expansion.

***Yet, even without a wide range of evaluative studies, some general lessons can be drawn:***

- No single model will meet the needs of all countries. Each institution must be designed according to the history, geography, political circumstances and culture of each nation. Moreover, the structure, mandate and powers of child rights institutions will evolve with time, as lessons are learned and the institution wins broader acceptance and support.
- The institution must function with genuine independence.

- The mandate of child rights institutions should not be limited to promotion, but should also include the investigation of complaints.
- The institution must have sufficient resources to respond quickly and efficiently to the demand for the services it provides.
- Incorporating the views and concerns of children into the work of children's ombudspersons and commissioners can enhance the impact of such institutions.

## **Mechanisms for coordinating implementation of the CRC**

The ratification of the CRC and growing awareness of child rights has led to countless initiatives in different areas by central, regional and local governments and civil society at large. Coordinating the activities of these multiple actors is essential to ensure their work is complementary and mutually reinforcing, and to help promote a comprehensive agenda for the realization of children's rights.

*More than half of the countries studied have established national mechanisms to coordinate implementation of the CRC.* A number of different models have been developed. Several countries have entrusted responsibility for coordination to a particular ministry or department: In France, the Ministry of Health and Solidarity has this function; in Germany, the Ministry for Family Affairs, Senior Citizens, Women and Youth; in Norway, the Ministry for Children and Family Affairs; in Poland, the Ministry of Education and Sport; and in Romania, the National Authority for Child Protection and Adoption.

A few countries (e.g. Belgium, The Netherlands, Portugal) have appointed a Commissioner or similar figure. Some countries (Germany and Spain) have established two coordinating mechanisms: one to coordinate the activities of the central government, and another to coordinate activities between the central and regional authorities. Other models of coordinating mechanisms also exist, including a variety of ad hoc arrangements.

*The characteristics of coordinating mechanisms vary greatly, and the mandate of many of them has grown over time, which is a critical step towards ensuring full implementation of the CRC.* Some are devoted primarily or exclusively to coordination. Many also play a role in establishing policy, monitoring progress or promoting awareness. An increasing number also conduct research, promote awareness of child rights, prepare national plans and strategies, conduct training, evaluate legislation, and prepare reports on the situation of child rights and reports to the Committee.

Several coordinating mechanisms are established by law or decree and others by administrative decision. Only mechanisms established by law, however, appear to have the power to adopt binding decisions; they also benefit from greater stability in case of change of government. Some coordinating bodies have their own budget and staff, while others are dependent upon the resources of ministries or agencies. In a number of countries, participation is limited to government bodies, while in others representatives of civil society, including religious authorities, representatives of the private sector, political organizations, individual experts and NGOs also participate.

No in-depth study on coordinating mechanisms has been conducted, so it is still too early to fully understand their effectiveness. What is clear is that no single model will suit all countries and

further research is required to ascertain which forms are more effective in different social, cultural and political contexts.

*A number of factors, however, have been identified that limit the effectiveness of existing coordinating mechanisms:*

- The lack of sufficient resources;
- Weak political priority given to coordination, and multidisciplinary and cross-sectoral cooperation;
- The failure to involve governmental departments responsible for planning and resource allocation;
- The failure to transfer central funds in support of local initiatives;
- The failure to ensure the active participation of regional/local authorities; and
- The failure to involve civil society.

## **Monitoring implementation of the CRC**

*Systems for monitoring violations of children's rights are designed primarily to detect such incidents so that the competent authorities can address them effectively;* compiling statistics is a secondary objective. In either case, the term implies a permanent effort and continuous assessment of progress to enable a constant improvement of the safeguard of the rights of the child.

*Monitoring of the implementation of the CRC is done to identify the rights that are not adequately protected or enjoyed, and the groups of children that may be particularly disadvantaged, at risk of abuse, exploitation and discrimination, and who otherwise are left behind by public policies;* as well as to evaluate the relevance and effectiveness of the measures that are in place to promote the safeguard of the rights of the child. A further important purpose of monitoring is to allow informed social debate on public policies concerning the rights of children.

*All indicator data used for reporting on the implementation of all other rights must be disaggregated including by race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.* This requirement is grounded on article 2 of the CRC which entails the right of every child to protection from discrimination of any kind. This approach needs to be reflected into data collection, processing, analysis and reporting.

Relevant data can be obtained through administrative data systems or through other methods. Administrative data are primarily collected for management of sector programmes and systems, such as those of health, education and justice. Such data are extensive, have a long time series and involve few additional costs since the data system already exists. However, the data do not report on children who have no contact with these systems and these are often the worst-off children. For example, vital registration systems, that cover virtually all deaths of children in some countries, may cover only half or less in others. This has serious implications not only for reporting on the right to life, survival and development, but also on the health and welfare indicators.

The other methods of obtaining appropriate data for monitoring are primarily of the quantitative type, such as household surveys (including censuses), surveillance sites, special purpose studies and the like. Qualitative methods, such as focus groups, case studies or conversation analysis are also relevant to monitoring, with specific strengths in providing information for interpretation of quantitative data. In

relation to Europe, there are a wide variety of household and other surveys used to obtain data for a range of purposes, primarily sectoral. Eurostat has been supporting the development of standardized household surveys across the European Union in the area of employment, for example. In other countries both Eurostat and international organisations have been contributing to the development of household surveys, which have a relatively short history in CIS countries.

*An important aspect that deserves to be emphasized is the growing use of surveys that directly involve children.* Young Voices is a household survey carried out in 2001 that interviewed children aged 9-17 years of age in 35 countries in the region on their opinions of home, school, safety, their future, and how well informed they were. However, development of appropriate tools is needed since cognitive development affects response quality and there is little experience with asking questions to young children. Also, it is required to pay attention on what questions should be asked of young children, as well as how the influence of parents may affect their responses.

*There are some conclusions that can be drawn from the study in relation to monitoring the implementation of the CRC:*

- State parties' reports to the Committee do not contain comprehensive empirical data on all of the rights contained in the CRC, and not enough of the data that are reported are disaggregated.
- Many countries seem to view monitoring as part of the process of international accountability rather than an effort to measure their own performance in the area of child rights, to detect problems and promote national appropriate solutions.
- Even though the primary focus of monitoring is children, it is common to make a sectoral assessment of progress on any of the areas included, forgetting to consider the child as a person who necessitates a holistic analysis and reporting of his or her situation.
- International and regional organizations could support the work further by helping develop standards, tested tools and examples of how better use can be made of existing data
- Data that are used for monitoring a situation can and should be used to improve children's situation by drawing attention to weaknesses of implementation of the CRC and to help focus attention and advocacy on relevant actions.
- There are also gaps in the data needed for monitoring the child, particularly in the sectors health, education, civil rights and freedoms, family environment and alternative care and special protection. Nonetheless, existing and new tools can help fill many of the gaps – such as household surveys that ask questions directly to children, more intra-sectoral analysis across diverse sources, much more analysis focused on the child as an individual,.