

Confessing the International Rights of Children

Confessing the International Rights of Children:
The Basic Documents with Analysis

Farhad Malekian and Kerstin Nordlöf

CAMBRIDGE
SCHOLARS

P U B L I S H I N G

Confessing the International Rights of Children:
The Basic Documents with Analysis,
by Farhad Malekian and Kerstin Nordlöf

This book first published 2012

Cambridge Scholars Publishing

12 Back Chapman Street, Newcastle upon Tyne, NE6 2XX, UK

British Library Cataloguing in Publication Data
A catalogue record for this book is available from the British Library

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ISBN (10): 1-4438-3981-7, ISBN (13): 978-1-4438-3981-5

To the sources of our inspiration

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PREFACE

It has always been our plan to collect the most important documents which are relevant to the protection of the rights of children within national, regional and international legislation. One of the essential reasons for the presentation of those basic documents relating to the rule of law applicable to the rights of children, minors or juveniles is to make their contents as accessible as possible to all readers. Thus, one of the core reasons for the presentation of these documents in a single volume is to protect the voice of all those victims whose rights have been violated, purely on the basis that they were minors. Justice cannot be done within the social structure of any society as long as the basic elements of that society do not appropriately protect the rights of children. This is because social justice cannot properly survive if the members of a society and the machinery of justice prejudice the protection of the rights of children or juveniles. Our aim with this collection is thus twofold. The purpose is firstly to protect the rights of our children, and secondly to emphasize that the development of the principles of international democracy is also based on the appropriate implementation of the rights of children. This means that inequality and violence cannot be reduced during peace or war as long as we have not modified our understanding of the meaning of rights for all persons of all ages. As the 1968 Proclamation of Tehran states, "The aspirations of the younger generation for a better world, in which human rights and fundamental freedoms are fully implemented, must be given the highest encouragement. It is imperative that youth participate in shaping the future of mankind"; and is further emphasized in the 2000 United Nations Millennium Declaration: "As leaders we have a duty therefore to all the world's people, especially the most vulnerable and, in particular, the children of the world, to whom the future belongs".

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Uppsala, May 2012

INTRODUCTION

In order to describe, understand and analyse the rule of law¹ for the protection of children, one has to understand the intention of the philosophy of law; this philosophy is itself the subject of much debate. In short, legal philosophy deals with the theoretical analysis of the nature of law, norms of law and the relationship between law and morality, and what the values underpinning of the various regulations. Thus, when we talk about different values, we are simultaneously talking about different combinations of norms which are supposed to protect society. This criterion distinguishes law norms from non-juridical norms, such as ethical one. An appropriate rule of law is hence a legal framework under which decisions about various matters of interest have to be impartially applied. The system of law must create and preserve equality, justice, fairness, reciprocity, mutual understanding and not least should be based on human values integrated with documents on human rights law. “International justice can refer to adherence to the rule of law generally, i.e., accepting that ‘there is an international society within which every state accepts that the same basic principles of international norms are applicable to every other state and that they are all equal before the law and the international legal system. They can neither modify the rules by their own will nor ignore them.’”² Adherence to the rule of law includes application of norms of equity *infra legem*.³ Therefore, when we deny or ignore the rule of law, which is based on the fundamental principles of human rights law, we are not only violating the rules of the national or regional spheres, but of the international legal community as a whole. This means that states are under an obligation to implement the principles of human rights law, including those protecting the integrity of children. Furthermore, there is

¹ The Preamble to the Universal Declaration of Human Rights states that human rights should be protected by the rule of law.

² F. Malekian, “Emasculating the Philosophy of International Criminal Justice in the Iraqi Special Tribunal,” 38 *Cornell Int’l L. J.* 638, 678 (2005)

³ Dinah Shelton, Of Means and Ends: Poverty Alleviation and Environmental Protection (Manatt/Ahn Professor of International Law, The George Washington University Law School Mexico City, November 11, 2008). Shelton has quoted F. Malekian *ibid.* www.iucnael.org/component/option,com_docman/task,doc_download/gid,228/Itemid,/lang,english/.

actually a growing tendency towards the recognition of the rules of law governing the protection of children as an integral part of obligatory *erga omnes*.

Laws to protect the rights of children have been existed since antiquity. These protections have been integrated into other laws such as criminal law or theological rules. Criminal law also meant civil law, family law and human rights law. This was because the body of criminal law dealt with most areas of domestic jurisdiction. Protection of children was thus not in itself a separate area of law, but an integral part of domestic legislation, the identification of which was rather problematic. The fact was that every matter came under the same concept of law. More significantly, provisions of natural law spoke about the rights of genders in which rights of children were combined. But the serious problem with these forms of protection was that children's rights were not recognised separately, and violations of their rights were therefore frequent. Yet, certain negative decisions could also be taken with regard to the natural rights of children by those who had law-making power or were regarded as the most authoritative body to carry out extraordinary measures. Those decisions could, as in the contemporary position of children, be taken in war or peacetime. In connection with a study on the confessing the international rights of children only a few examples out of millions concerning the violation of children's rights will be mentioned below, where the contradictions of such practice are more than obvious.

One historical example is the Thirty Years War in Europe (1618-1648) during which thousands of children were killed, and some even eaten.⁴ This was mostly the consequence of theological atrocities beginning in Germany and going through most of central and northern Europe. But massacres against children were not just carried out in seventeenth century Europe. The 1917 Russian Revolution stands as one of the most terrible examples of genocide, including children. In 1921, the Committee of The Save the Children Fund from Canada insisted on the importance of relief for six million Russian children who were suffering from famine and malnutrition.⁵ For instance, the famine in the Ukraine (1932-1933), which was the result of forced collectivization by the Russian communists, caused the starvation of seven million, a large number of which were

⁴ Farhad Malekian, *International Criminal Law*, Vol.2 (1991).

⁵ www.savethechildren.ca/page.aspx?pid=384. Visited 28 February 2012.

undoubtedly children.⁶ These inhuman decisions were a direct consequence of Stalinist policies, rather than of Marx and Engel's theories.

The same is true in the case of famine and starvation during the Second World War in Bengal, India. Millions knowingly perished because of Winston Churchill's diplomacy, causing the huge murder of Indian children.⁷ The basic reason for this murder was to use the resources of India in order to wage war against Germany and Japan which were fighting against most European States. Churchill himself mentions that the British victory was carried out on the "shoulders of our small Island" namely Bengal.⁸ Or perhaps it is best to say on the small shoulders of babies, juveniles, and young children. These killings were surely against children's rights in peace or war, and in disregard of the duties of the colonial powers of the time.

Atrocities and criminal actions were also committed against Jewish children during the Second World War (1939–1945). The crimes were mostly carried out by Nazi criminals. The result was that the natural and legal rights of Jewish children were seriously violated during the war and they were brutally killed. This brutality against Jewish children even occurred in other countries, including Russia, and occurred when Germany occupied Poland in 1939. Almost 1000 children were forced from Russia to escape to Iran and obtain temporary asylum in Tehran. They were called Tehran Children.⁹

The Vietnam War (1955–1975) is another instance of violation of children's rights and their humiliation.¹⁰ It was generally a war between two super powers—the United States and the USSR. The former supported South Vietnam, and the latter North Vietnam. Over one million Vietnamese were slaughtered, a large number of whom were children. One of the most horrible ongoing legacies of this war is the children who were born as a result of the rape of Vietnamese women, or of close relations with American Soldiers. They were called *children of the dust*. The rights of these children were long denied, not only by the American authorities,

⁶ James E. Mace, *Communism and the Dilemmas of National Liberation: National Communism in Soviet Ukraine, 1918-1933* (1983); Borys Martchenko, *La Famine-genocide en Ukraine: 1932-1933* (1983).

⁷ Madhusree Mukerjee, *Churchill's Secret War: The British Empire and the Ravaging of India during World War II* (2010).

⁸ Winston Churchill, *The Second World War*, 6 volumes (2002).

⁹ Henryk Grynberg, *Children of Zion (Jewish Lives - Nonfiction)*, (1998).

¹⁰ Richard Falk, *The Vietnam War and International Law*, Vol.1 (1968), Vol.2 (1970), Vol.3 (1972). Richard Falk, *The Vietnam War and International Law: The Concluding Phase*, Vol.4 (1976).

but also by the Vietnamese. Even those children who emigrated to the United States faced problematic questions on their arrival. These problems even occurred in 1991, for the children, who were now grown up, had themselves had children, and those children now had an American background.¹¹ One of the most famous photos of the war, demonstrating the horrors suffered by children (and which also won the Pulitzer Prize), is the photo recording the running of five children between 5–12 years, three of whom are two brothers and a sister, and two others their cousins. It shows the 9-year-old sister running naked in order to flee a South Vietnamese napalm attack on Trảng Bàng village.¹²

The use of children by Iranian armed forces in the war between Iran and Iraq (1980–1988) and offering them the key to paradise is another illustrative example of ignoring of children's rights by two of the Middle East's oil powers. The violations of Kurdish children's rights in Halabja in Iraq by Saddam Hussein (1988), and their killing with chemical weapons, imply the systematic machinery of ignoring children's rights. The tragedy of the killing of Kurdish children was internationally condemned, but without any particular steps taken in the cause of victims. Saddam Hussein was hanged in 2006, but not for the destruction of Kurdish children's rights.

In fact, Iraqi children went into more horrible and unfinished wars after the war with Iran. This is known as the First and Second Gulf Wars. The first started by a coalition of states led by the United States. It ended in 1991. The intention was to drive out the Iraqi army from Kuwait.¹³ The Second war started in 2003 and ended in 2011.¹⁴ This was led by the United States and the Great Britain aggressive armed activities. In 1995 the Food and Agriculture Organization of the United Nations report Crop and Nutrition Status Assessment Mission pointed out that the mortality among Iraqi children had increased almost fivefold since 1990. According

¹¹ Carol Lawson, Sheltering Children Of the Vietnam War, The New York Times, April 18, 1991. www.nytimes.com/1991/04/18/garden/she. Visited 28 February 2012.

¹² en.wikipedia.org/wiki/Vietnam_War. Visited 28 February 2012.

¹³ Iraq had conquered its neighbour country – Kuwait. This was based on the fact that the discussion for oil settlement was failed between the two countries.

¹⁴ In short, Saddam Hussein had been working for the CIA. It is today generally agreed by a majority of writers that the resolutions of the Security Council did not permit the use of armed force, although the invasion of Kuwait was a strong reason for armed attacks. For an examination of the Gulf War See Farhad Malekian, *Condemning the Use of Force in the Gulf Crisis* (2ed, 1994); See also Farhad Malekian, 'Emasculating the Philosophy of International Criminal Justice in the Iraqi Special Tribunal,' 38:3 *Cornell International Law Journal* (2005) 673-723.

to the 1996 United Nations Children Found (UNICEF), every month 4,500 children under five years old died from hunger in Iraq. As a result, millions of children were starving and still are suffering as a consequence of the Gulf Wars.¹⁵

These violations of children's rights are intensified in other parts of the globe. For instance, according to the Human Rights Watch Report, the use of child soldiers as young as 11 in Burma constituted 20 per cent of the total military. However, this figure did not however include the recruitment of children by opposition political parties.¹⁶

Until recent decades, children in Latin America were not recognized as an independent social group. However, the 1989 Convention on the Rights of the Child has developed the idea of the recognition and protection of the rights of children. Nevertheless "it is a constant struggle for families to protect the rights of their children".¹⁷ One of the serious reasons is the economic poverty which creates practical problems for the protection of children, in particular those who do not have any guardian or custodian. The problem is greater in Brazil, where street children are reportedly killed by police officers. In addition, children are still the victims of social or political violence because of their vulnerability. The consequences of this poverty are clear even today.

In 2010, the estimated global number of childhood deaths was 7.6 million, half of which was, at least, due to poor nutrition. It is also estimated that 4 per cent of malnourished children live in Latin America and the Caribbean, 26 per cent in Africa and 70 per cent in Asia.¹⁸ The

¹⁵ Farhad Malekian, 'Emasculating the Philosophy of International Criminal Justice in the Iraqi Special Tribunal,' 38:3 *Cornell International Law Journal* (2005) 673-723.; See also Report of the Secretary-General on children and armed conflict in Iraq, S/2011/366, 15 June 2011. The report emphasises the patterns of grave violations committed against children. It lists the killing and injury of a large number of children in various situations and conflicts such as recruitment and use of children by armed forces and armed groups, detention of children for alleged association with armed groups, killing or maiming of children, rape or other grave sexual violence against children, abduction of children, attacks on schools or hospitals, denial of humanitarian access and sexual violence perpetrated against children.

¹⁶ *My Gun Was as Tall As Me: Child Soldiers in Burma* (2002).

¹⁷ Maria Cristina Salazar and Felicia Marie Knaul, *Children Without Rights in Latin America*, pangaea.org/street_children/world/rights.htm, visited on 1 March 2012.

¹⁸ www.worldhunger.org/.../world%20hunger%20facts%202002.htm. Visited on 1 March 2012.

under-nourishment of children is not necessarily due to food shortages,¹⁹ but incorrect economic division; insufficient income among families thus endangers the physical health of children, and violates their rights to a healthy childhood which is repeatedly stated in United Nations documents.²⁰

The majority of the Afghan population are children. Afghan children not only suffer from poverty (and therefore nutrition problems), but also from 30 years of war and the extreme risk of violence, abuse, exploitation, gender discrimination, attacks and air strikes by insurgent groups, international military and armed forces and the Afghan National Army.²¹ Boys face recruitment and sexual abuse by the armed forces. To take a few examples, 93 children died in United States air strikes in 2009; almost 1.6 million children have been orphaned and are condemned also to hunger, sickness, and deprivation because of the NATO war. In addition, the children of refugees, and refugee children are homeless and experience many social problems. Registration of births is very limited (90 per cent are not registered at all), and a large number of children die before their fifth birthday. Lack of proper education is damaging children, in particular girls who face multiple discrimination. Almost 70 per cent of girls in Afghanistan do not attend school.²²

The denial of children's rights can also be seen in the policy of the Chinese government against its own children, or its forceful occupation of Tibet, for example in discrimination of social services or prevention of distribution of medicine to hundreds of thousands of children who are at risk of permanent mental and physical disabilities because of factory

¹⁹ Black RE, Morris SS, Bryce J. "Where and why are 10 million children dying every year?" Department of International Health, Johns Hopkins Bloomberg School of Public Health, Baltimore (2003).

²⁰ www.worldhunger.org/articles/Learn/child_hunger_facts.htm. Visited on 1 March 2012.

²¹ Report of the Secretary-General on children and armed conflict in Afghanistan, S/2011/55, 3 February 2011.

²² David Swanson & David Swanson, Afghanistan: worst place for children to be born and raised: Not only do children die, they can also be recruited and used to fight in armed forces and groups (October 2011), stopwar.org.uk/.../afghanistan.../839-afghanistan-the-worst-place-on-earth-for-children. Visited on 1 March 2012. Visited on 1 March 2012; David Swanson & David Swanson The Children of Afghanistan: An analysis of children's rights in Afghanistan Report (2011), stopwar.org.uk/.../afghanistan.../839-afghanistan-the-worst-place-on-earth-for-children. Visited on 1 March 2012. Visited on 1 March 2012.

pollution.²³ Discrimination between boys and girls is also a serious problem in Chinese society. Similarly, gender discrimination against girls in India constitutes another aspect of the violation of children's rights.²⁴

Although Australia has stated that it supports human rights law, the United Nations's Human Rights Committee has handled 50 cases relating to Australia since 1990. The Committee has found that in 17 decisions Australia violated its obligations of human rights law, including mistreatment of children or family unity by immigration authorities or the like.²⁵ Despite this, the Australian government wholly denied the decision of Human Rights Committee arguing that the Committee was not a Court, and that its decision was therefore not judicially binding. The Australian authorities have, however ignored the fact that Australia does not have a Bill of Rights, and that Australian courts are not therefore empowered to hear complaints about violations of international human rights law.²⁶

Australia, Canada and the United States do not accept the Human Rights Committee's interpretation of Article 19 of the Convention on the Rights of the Child disallowing the corporal punishment of children.²⁷ Nevertheless, the most recent event is that the third Protocol to the Convention on the Rights of the Child empowers the United Nations Child Rights Committee to examine violations of children's rights. The Protocol allows children and young people to report violations of their rights directly to the Committee. It opened for signature and ratification on 29 February 2012. The hope is that the Protocol will be signed by all states. This is exclusively for the protection of children and gross violations of their rights under different domestic legal machinery. However, we are aware that the Convention on the Rights of the Child has not yet been ratified by the United State or Somalia. The former claims that its national

²³ My Children Have been Poisoned, Human Rights Watch Report (2011), www.hrw.org/news/.../china-children-poisoned-lead-and-denied-treatment. Visited on 1 March 2012.

²⁴ Navdeep Kour Sasan, *The Indian Perspective of Gender Discrimination on Girl Children and Foeticide in Farhad Malekian and Kerstin Nordlöf, The Sovereignty of Children in Law* (2012), pp. 178-ff.

²⁵ *Winata v Australia* (2002): UN Doc CCPR/C/72/D/930/2000 (16 August 2001); *Bakhtiyari v Australia* (2003) UN Doc CCPR/C/79/D/1069/2002 (29 October 2003); *Madafferi v Australia* (2004): UN Doc CCPR/C/81/D/1011/2001 (26 August 2004). Visited on 2 March 2009.

²⁶ www.nswccl.org.au/issues/hr_violations.php. Visited on 2 March 2012.

²⁷ Simalis, Linda (21 March 2010): "Aussie parents to defy UN smacking ban". *The Sunday Telegraph* (Sydney). http://www.heraldsun.com.au/news/national/aussie-parents-to-defy-un-smacking-ban/story-e6frf716-1225843384853?from=public_rss. Visited on 2 March 2012.

legislation protects the rights of children, although there is evidence proving that there are a considerable number of problems regarding child abuse, juvenile law and health services. For instance, there are 3 million reported cases of child abuse, including physical and sexual ones. And some individual states in the United States have not yet abolished the application of the death penalty to those who were minors at the time of the commission of the crime. In 2009, the Human Rights Watch even found that 2500 children received life imprisonment although they were under 18 at the time of the crime. In addition, although the United States has ratified the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts, it has not completely fulfilled its provisions and has even armed countries such as Chad, The Democratic Republic of Congo, Sudan and Yemen which notoriously use children in armed conflicts.²⁸

Serious violations and horrible chemical killing of children in the Gaza Strip (2008) by Israeli armed forces implies the illegality of unlawful violations of the rights of children.²⁹ The violations of the Gaza Strip children's rights can be read in the statement by Richard Goldstone on behalf of the Members of the United Nations Fact Finding Mission on the Gaza Conflict before the Human Rights Council. It concludes *inter alia* that: "The truth and accountability are also essential to prevent ascribing collective guilt to a people. Many people in Gaza deplore the firing of thousands of rockets at civilians in Southern Israel and the terror that it has caused to innocent children, women and men."³⁰ It further states that "And many in Israel, Jews and Palestinians, deplore the actions by the Israel Defense Force that caused unjustifiable civilian deaths and injuries on a very large scale. They do not approve of the damage to the food and commercial infrastructure of Gaza that will take many years to repair".³¹ The report of the mission specified that in the Gaza Strip 20 per cent of children suffer from post-traumatic stress disorders, and that:

From the facts gathered, the Mission finds that numerous violations of international humanitarian law and human rights law were committed in the context of ... detentions. Civilians, including women and children, were

²⁸ childrensrightsportal.org/united-states-of-america/. Visited on 2 March 2012.

²⁹ For example see HUMAN RIGHTS SITUATION IN PALESTINE AND OTHER OCCUPIED ARAB TERRITORIES, A/HRC/10/22, 20 March 2009.

³⁰ Statement by Richard Goldstone on behalf of the Members of the United Nations Fact Finding Mission on the Gaza Conflict before the Human Rights Council, Human Rights Council 12th Session – 29 September 2009.

³¹ Ibid.

detained in degrading conditions, deprived of food, water and access to sanitary facilities, and exposed to the elements in January without any shelter. ... In the al-Atatra area in north-western Gaza, Israeli troops had dug out sandpits in which Palestinian men, women and children were detained. Israeli tanks and artillery positions were located inside the sandpits and around them and fired from next to the detainees...The razing of farmland and the destruction of greenhouses are expected to further worsen food insecurity despite the increased quantities of food items allowed into Gaza since the beginning of the military operations. Dependence on food assistance increases. Levels of stunting and thinness in children and of anaemia prevalence in children and pregnant women were worrying even before the military operations. The hardship caused by the extensive destruction of shelter (the United Nations Development Programme reported 3,354 houses completely destroyed and 11,112 partially damaged) and the resulting displacement particularly affects children and women. Children's psychological learning difficulties are compounded by the impact of the blockade and the military operations on the education infrastructure. Some 280 schools and kindergartens were destroyed in a situation in which restrictions on the importation of construction materials meant that many school buildings were already in serious need of repair.³²

The violation of children's rights can also be examined in other parts of the world. A clear example of these violations is the various illegal uses of children in conflicts in Sierra Leone, Somalia, Uganda and Chad.³³ In all regions, children have been physically and physiologically employed to carry out adult orders and works. They have also been forced in recruitment and use of children in armed forces and groups, into sex slavery, to commit crimes, and to kill civilians. In the Uganda conflicts as in many other conflicts in Africa or other parts of the world, children were stigmatized in order not to be able to return to their own society, for example by being forced to kill members of their own family. It is reported that many child soldiers in Uganda, Nepal and Sri Lanka are girls. They are raped, sexually violated and forced to marry military commanders. Although the Special Sierra Leone Court (SCSL) and the hybrid court are working with all relevant issues governing violations of children's rights, the legacy of conflicts has been seriously harmful, and rehabilitation and returning children to normal social life has not been easy. The SCSL has even worked with the aim of proving that children should always be regarded as victims and not as perpetrators. It has therefore strongly

³² *Ibid.*, paras.57, 58, 67, 70.

³³ For example see Report of the Secretary-General on children and armed conflict in Chad, S/2011/64, 9 February 2011.

avoided applying any punishment at all. However, the application of capital punishment to children has been employed in other parts of the world. A clear example and very extensive form of this illegal punishment has been carried out under the Islamic Republic of Iran. In addition, trafficking, as well as the sexual exploitation of children in many countries, and the unlawful use of children for work purposes in a large number of countries, are still some of the most unpleasant violations of children's rights.

All the above examples show the injustice against children and their vulnerable position as victims.³⁴ The Basic Principles and Guidelines on the Rights to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law has to some extent described the word "victim" by emphasising that:

Victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term "victim" also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.³⁵

Protection of children's rights under the rule of law undoubtedly constitutes one of the most important questions of justice and morality, which cannot be ignored by any national or international lawyer. The juridical protection of these rights has been especially emphasized in a number of international documents formulated under the supervision of the United Nations Organization. There are therefore many international documents dealing directly or indirectly with the rights of juveniles, youths, minors or children. A very significant convention relating to the rights of children is the Convention on the Rights of the Child, and its very valuable additional protocols. The convention is a milestone in the protection of various rights of children. Similarly, there are other

³⁴ Report of the Special Representative of the Secretary-General for Children and Armed Conflict, A/66/256, 3 August 2011.

³⁵ Basic Principles and Guidelines on the Rights to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. G.A. Res. 60/147, U.N. Doc.A/RES/60/147 (Mar. 21, 2006).

international conventions which protect the rights of children before various types of jurisdiction, when the question of juvenile criminality arises, and in other situations such as discrimination.

Within different continents, a number of documents directly and indirectly protecting the rights of children have been developed; the relevant sections of these documents are presented here. The presentation is divided into different sections depending on the direct or indirect intention of the relevant document. They may also be divided according to the particular child protection. Each document presented in this issue has an introductory description. Some documents are presented in their entirety, and others, because of their wider application than child protection, only partly. The introduction to each document illustrates and furnishes important explanations to aid understanding of the legal position of the document and the reasons underlying its formulation or ratification in the international or regional arena. Our hope is that the rule of law protecting the rights of children, will be positively worked out in their interests.

CHAPTER I

INTERNATIONAL LEGISLATIONS INDIRECTLY SUPPORTING VARIOUS RIGHTS OF CHILDREN

1. Universal Declaration of Human Rights, 1948

The Universal Declaration of Human Rights, which was adopted by the United Nations General Assembly in 1948, is one of the most significant instruments in the field of human rights.¹ Although the Declaration does not have the legal effect of an international convention, its norms are an integral part of customary international law. The norms of the Declaration are also regarded as an important part of the international law of *jus cogens*, which means that they have to be respected by all states and should not be violated by their national legislations. The Declaration contains many provisions regarding the fundamental rights of individuals that should not be ignored by state organs or authorities. Some of the rights listed in the Declaration are of a general, and some of a particular, character. Two of the most important Articles of the Declaration on the rights of children are numbers 25 and 26: these bring together some of the essential principles that are of decisive social value in the protection of children. They state:

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

¹ Resolution 217 A (III) of 10 December 1948. It was a unanimously adopted by the 48 member states of the U.N.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

2. Proclamation of Tehran, 1968

The words of the Universal Declaration of Human Rights regarding the protection of children are also contained within the Proclamation of Tehran, constituting one of the significant instruments of the recognition of the protection of the rights of the child. The Proclamation was adopted at an international conference on human rights in Tehran, 1968, and the intention was to strengthen human rights values within national and international systems. The Proclamation particularly stated that “Since human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible. The achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international policies of economic and social development”.² The Proclamation paved the way for the adoption of a number of new international instruments.

One of the Proclamation’s 19 sections states the importance of the protection children’s rights by the international political and legal community as a whole. In other words, the Proclamation internationalizes the rights of children, and emphasises the obligations of the international community to seriously deal with the rights of children at a universal level.³ It read that:

² Section 13.

³ Proclamation of Tehran, Final Act of the International Conference on Human Rights, Teheran, 22 April to 13 May 1968, U.N. Doc. A/CONF. 32/41 at 3 (1968), United Nations, May 1968.

14. The existence of over seven hundred million illiterates throughout the world is an enormous obstacle to all efforts at realizing the aims and purposes of the Charter of the United Nations and the provisions of the Universal Declaration of Human Rights. International action aimed at eradicating illiteracy from the face of the earth and promoting education at all levels requires urgent attention;

15. The discrimination of which women are still victims in various regions of the world must be eliminated. An inferior status for women is contrary to the Charter of the United Nations as well as the provisions of the Universal Declaration of Human Rights. The full implementation of the Declaration on the Elimination of Discrimination against Women is a necessity for the progress of mankind;

16. The protection of the family and of the child remains the concern of the international community. Parents have a basic human right to determine freely and responsibly the number and the spacing of their children;

17. The aspirations of the younger generation for a better world, in which human rights and fundamental freedoms are fully implemented, must be given the highest encouragement. It is imperative that youth participate in shaping the future of mankind.

.....

Therefore,

The International Conference on Human Rights,

1. Affirming its faith in the principles of the Universal Declaration of Human Rights and other international instruments in this field,

2. Urges all peoples and governments to dedicate themselves to the principles enshrined in the Universal Declaration of Human Rights and to redouble their efforts to provide for all human beings a life consonant with freedom and dignity and conducive to physical, mental, social and spiritual welfare.

3. Declaration on Social Progress and Development, 1969

Another relevant instrument concerning safeguarding of the rights of children is the Declaration on Social Progress and Development, recalling the principles of the Declaration of the Rights of the Child. The Declaration was adopted and proclaimed by General Assembly Resolution 2542 (XXIV) of 11 December 1969. The Declaration has several goals for the protection of social rights of human beings under the legal machinery

of states. Its aims are to create some sort of norms regarding the duties of governments in the protection of children's rights. It therefore included several principles relating to the rights of children, with the hope that they will be respected by the legal authorities of states. Some of the applicable provisions of the Declaration are contained in Articles 4, 11, 19, 21 and 22. They state:

Part I PRINCIPLES

Article 4

The family as a basic unit of society and the natural environment for the growth and well-being of all its members, particularly children and youth, should be assisted and protected so that it may fully assume its responsibilities within the community. Parents have the exclusive right to determine freely and responsibly the number and spacing of their children.

Part II OBJECTIVES

Article 11

(a) The provision of comprehensive social security schemes and social welfare services; the establishment and improvement of social security and insurance schemes for all persons who, because of illness, disability or old age, are temporarily or permanently unable to earn a living, with a view to ensuring a proper standard of living for such persons and for their families and dependants;

(b) The protection of the rights of the mother and child; concern for the upbringing and health of children; the provision of measures to safeguard the health and welfare of women and particularly of working mothers during pregnancy and the infancy of their children, as well as of mothers whose earnings are the sole source of livelihood for the family; the granting to women of pregnancy and maternity leave and allowances without loss of employment or wages;

(c) The protection of the rights and the assuring of the welfare of children, the aged and the disabled; the provision of protection for the physically or mentally disadvantaged;

(d) The education of youth in, and promotion among them of, the ideals of justice and peace, mutual respect and understanding among peoples; the promotion of full participation of youth in the process of national development;

(e) The provision of social defence measures and the elimination of conditions leading to crime and delinquency, especially juvenile delinquency;

(f) The guarantee that all individuals, without discrimination of any kind, are made aware of their rights and obligations and receive the necessary aid in the exercise and safeguarding of their rights.

Social progress and development shall further aim at achieving the following main objectives:

Part II

MEANS AND METHODS

Article 19

(a) The provision of free health services to the whole population and of adequate preventive and curative facilities and welfare medical services accessible to all;

(b) The enactment and establishment of legislative measures and administrative regulations with a view to the implementation of comprehensive programmes of social security schemes and social welfare services and to the improvement and co-ordination of existing services;

(c) The adoption of measures and the provision of social welfare services to migrant workers and their families, in conformity with the provisions of Convention No. 97 of the International Labour Organisation and other international instruments relating to migrant workers;

(d) The institution of appropriate measures for the rehabilitation of mentally or physically disabled persons, especially children and youth, so as to enable them to the fullest possible extent to be useful members of society-these measures shall include the provision of treatment and technical appliances, education, vocational and social guidance, training and selective placement, and other assistance required-and the creation of social conditions in which the handicapped are not discriminated against because of their disabilities.

Article 21

(a) The training of national personnel and cadres, including administrative, executive, professional and technical personnel needed for social development and for over-all development plans and policies;

(b) The adoption of measures to accelerate the extension and improvement of general, vocational and technical education and of training and retraining, which should be provided free at all levels;

(c) Raising the general level of education; development and expansion of national information media, and their rational and full use towards

continuing education of the whole population and towards encouraging its participation in social development activities; the constructive use of leisure, particularly that of children and adolescents;

(d) The formulation of national and international policies and measures to avoid the "brain drain" and obviate its adverse effects.

Article 22

(a) The development and co-ordination of policies and measures designed to strengthen the essential functions of the family as a basic unit of society;

(b) The formulation and establishment, as needed, of programmes in the field of population, within the framework of national demographic policies and as part of the welfare medical services, including education, training of personnel and the provision to families of the knowledge and means necessary to enable them to exercise their right to determine freely and responsibly the number and spacing of their children;

(c) The establishment of appropriate child-care facilities in the interest of children and working parents.

4. Universal Declaration on the Eradication of Hunger and Malnutrition, 1974

The Universal Declaration on the Eradication of Hunger and Malnutrition is a key instrument protecting the rights of children to food, and condemning starvations. The Declaration was adopted by the World Food Conference in 1974, having been strongly supported by General Assembly Resolution 3180 (XXVIII) in 1973. One of the most important parts of the Declaration concerns the inalienable and indisputable rights of children to food for their daily life. Other provisions of the Declaration emphasise the responsibility of governments for achieving the aims of eradicating hunger, malnourishment and starvation among children. According to Jean Ziegler, the United Nations Special Rapporteur on the Right to Food from 2000 to March 2008, starvation of children is one of the main reasons for the high mortality in this group: "In the world, approximately 62 million people, all causes of death combined, die each year. One in twelve people worldwide is malnourished. In 2006, more than 36 millions died of hunger or diseases due to deficiencies in micronutrients". Although the provisions of the Declaration encourage protecting children from starvation or hunger, the international community is still challenged by the problems. Some of the relevant provisions of the Declaration on the Eradication of Hunger and Malnutrition state:

The Conference consequently solemnly proclaims:

1. Every man, woman and child has the inalienable right to be free from hunger and malnutrition in order to develop fully and maintain their physical and mental faculties. Society today already possesses sufficient resources, organizational ability and technology and hence the competence to achieve this objective. Accordingly, the eradication of hunger is a common objective of all the countries of the international community, especially of the developed countries and others in a position to help.

2. It is a fundamental responsibility of Governments to work together for higher food production and a more equitable and efficient distribution of food between countries and within countries. Governments should initiate immediately a greater concerted attack on chronic malnutrition and deficiency diseases among the vulnerable and lower income groups. In order to ensure adequate nutrition for all, Governments should formulate appropriate food and nutrition policies integrated in overall socio-economic and agricultural development plans based on adequate knowledge of available as well as potential food resources. The importance of human milk in this connection should be stressed on nutritional grounds.

3. Food problems must be tackled during the preparation and implementation of national plans and programmes for economic and social development, with emphasis on their humanitarian aspects.

4. It is a responsibility of each State concerned, in accordance with its sovereign judgement and internal legislation, to remove the obstacles to food production and to provide proper incentives to agricultural producers. Of prime importance for the attainment of these objectives are effective measures of socio-economic transformation by agrarian, tax, credit and investment policy reform and the reorganization of rural structures, such as the reform of the conditions of ownership, the encouragement of producer and consumer co-operatives, the mobilization of the full potential of human resources, both male and female, in the developing countries for an integrated rural development and the involvement of small farmers, fishermen and landless workers in attaining the required food production and employment targets. Moreover, it is necessary to recognize the key role of women in agricultural production and rural economy in many countries, and to ensure that appropriate education, extension programmes and financial facilities are made available to women on equal terms with men.

5. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 1981

Another remarkable international document, which indirectly relates to the protection of the rights of children, whether minors, young or juveniles, is the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, adopted by the General Assembly in 1981. One of the chief purposes of the Declaration is to restrict provisions of the constitutions of states which interfere with basic rights of individuals, and discriminate between different beliefs. The Declaration has in fact strengthened the norms of the Universal Declaration of Human Rights. The 1981 Declaration was formulated during a time when there were movements in some of the states against the inalienable rights of individuals in the matter of freedom of religion, such as the Iranian constitution of 1979. It must not be forgotten that one of the major criticisms of the Declaration is its legal structure, which is formulated as a resolution and not as a law-making treaty. Some of the most important parts of the Declaration relating to the rights of children state:

Article 5

1. The parents or, as the case may be, the legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up.
2. Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the guiding principle.
3. The child shall be protected from any form of discrimination on the ground of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of religion or belief of others, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.
4. In the case of a child who is not under the care either of his parents or of legal guardians, due account shall be taken of their expressed wishes or of any other proof of their wishes in the matter of religion or belief, the best interests of the child being the guiding principle.