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Innocenti Research Centre

Innocenti Insight
**THE EVOLVING CAPACITIES
OF THE CHILD**



Save the Children



Innocenti Insight

THE EVOLVING CAPACITIES OF THE CHILD

by
Gerison Lansdown

Acknowledgements

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FOREWORD

The understanding of childhood varies significantly around the world. No universal consensus can be found as to what children need for their optimum development, what environments best provide for those needs, and what form and level of protection is appropriate for children at a specific age. Indeed, there is no agreement on the nature of childhood, when children become adult, or the goals that families aspire to for their children. Yet, across this diversity, the Convention on the Rights of the Child, now ratified by almost every country in the world, has established universal principles and a normative framework for all children. Even so, childhood is not an undifferentiated period. A 17-year-old has profoundly different needs and capacities than a 6-month-old baby, while being entitled to the same rights. A 10-year-old in one country may be protected from economic or domestic responsibilities, in another, such responsibilities are not only the norm, but deemed beneficial for both the child and the family. A question arises, therefore, as to how governments, and the societies they represent, should interpret and apply universal human rights standards across such diverse perceptions of childhood.

These questions can be approached by exploring an important but, as yet, relatively unfamiliar concept embodied in Article 5 of the Convention – the concept of the evolving capacities of the child and the obligation to provide guidance and direction consistent with these evolving capacities in the exercise by the child of his or her rights. This concept has far reaching implications – recognising the changing relationship between parents and children as they grow up, and focusing on capacity rather than age as the determinant in the exercise of human rights. It challenges any presumption of ownership of the child by parents, and introduces a role for the State in helping achieve appropriate protection of children

within their families and to encourage children's participation in decision-making.

The UNICEF Innocenti Research Centre and Save the Children Sweden have commissioned this study in recognition of the critical importance of furthering the understanding of the evolving capacities of the child. While other challenging concepts embodied in the Convention on the Rights of the Child have prompted vigorous debate and generated a significant body of research and analysis, there has been little attention given to the evolving capacities of the child and the implications of these capacities for the enjoyment of children's rights. The concept of the best interests of the child, for example, has merited the focus of experts from a wide range of disciplines. Article 12, the right of the child to express views and have them taken seriously, has attracted the attention of numerous academics, child rights advocates, government officials, and professionals. The understanding of these issues requires a process of coming to grips with the very essence of childhood. It necessitates bringing together what is known about childhood from many perspectives, including child psychology, physiology, anthropology, sociology, law and early childhood development, in order to help understand how children's rights can be most effectively realised and the role that children themselves play in that process.

This study identifies three separate but inter-linked strands crucial to understanding the concept of the evolving capacities of the child. First, it analyses the developmental dimension of the Convention. What can we learn from existing theory and research about the environments most likely to promote the optimum capacities of children? What do we know about the process of learning, the impact of poverty, the role of play, and the impact of different family

structures, to help us understand how to create the best possible environments for children? And how do culture, context and resilience factors impact on those processes? These aspects should inform the responsibility of governments in creating appropriate environments for children to enable them to thrive, through fulfilling their human rights, including to education, health, play, adequate standard of living and family life.

Secondly, it analyses the participatory or emancipatory dimension. What do we know about the capacities of children to exercise rights for themselves? Does research that seeks to identify fixed ages for the acquisition of competencies provide useful answers? What can we learn from cross-cultural studies about how differently children demonstrate capacity according to the world in which they live? Do perceptions of capacity differ between adults and children? These questions challenge us to examine how best to respect children's capacity to exercise their rights and to take responsibility for those decisions they are competent to make for themselves.

Finally, the study examines evolving capacities as a protective concept. What level of protection are children entitled to in recognition of their childhood? What impact does cultural context, parental or com-

munity support, and children's developing responsibility have on protection? What role do children themselves play in their own protection? How can participatory and protection rights be balanced in the best interests of the child? And in light of all these questions, how do we create appropriate legal frameworks to protect and respect children's rights? What are the policy implications?

In publishing this study, we aim to promote widespread debate around these issues. Further work will be needed in applying the concept to many rights recognized by the Convention – for example, the rights to information, freedom of association, freedom of religion, privacy, and the ages of marriage and medical treatment. More cross-cultural research is needed to explore how work and formal education serve to either promote or inhibit capacity. And we need a better understanding of how to build children's own capacities to take responsibility for the exercise of their rights, while not exposing them to unnecessary risk or excessive expectations.

This publication represents a contribution towards what we hope will be a fruitful and challenging journey in understanding how universal human rights can be realised most effectively for children experiencing a multitude of childhoods across the globe.

Marta Santos Pais
Director, Innocenti Research Centre

EXECUTIVE SUMMARY

Understanding the concept of evolving capacities of the child

For the first time in an international human rights treaty, the Convention on the Rights of the Child introduces the concept of the ‘evolving capacities’ of the child. Article 5 of the Convention states that direction and guidance, provided by parents or others with responsibility for the child, must take into account the capacities of the child to exercise rights on his or her own behalf.

This principle – new in international law – has profound implications for the human rights of the child. It establishes that as children acquire enhanced competencies, there is a reduced need for direction and a greater capacity to take responsibility for decisions affecting their lives. The Convention recognises that children in different environments and cultures who are faced with diverse life experiences will acquire competencies at different ages, and their acquisition of competencies will vary according to circumstances. It also allows for the fact that children’s capacities can differ according to the nature of the rights to be exercised. Children, therefore, require varying degrees of protection, participation and opportunity for autonomous decision-making in different contexts and across different areas of decision-making.

The concept of evolving capacities is central to the balance embodied in the Convention between recognising children as active agents in their own lives, entitled to be listened to, respected and granted increasing autonomy in the exercise of rights, while also being entitled to protection in accordance with their relative immaturity and youth. This concept provides the basis for an appropriate respect for children’s agency without exposing them prematurely to the full responsibilities normally associated with

adulthood. It is important to recognise that it is not respect for rights, as such, which is influenced by the evolving capacities of children: All the rights in the Convention on the Rights of the Child extend to all children irrespective of capacity. What is at issue is where responsibility for the exercise of the rights lies.

Balancing the rights of parents and children

The Convention adds a vital additional dimension to the status of the child within the family. Article 5 stresses that the State must respect rights and responsibilities of parents, or other caregivers, to provide ‘appropriate direction and guidance in the exercise by the child of their rights in a manner consistent with the evolving capacities of the child’. In other words, parental rights and responsibilities are not unbounded. By inserting the word ‘appropriate’, Article 5 removes the possibility that parents or other carers have carte blanche to provide, or fail to provide, whatever guidance and support they deem suitable. Similarly, Article 18 imposes certain boundaries on the upbringing and development of children, stressing that ‘the best interests of children will be (the parents) basic concern’.

These provisions have profound significance for the triangular relationship between the child, the family and the State. The Convention, for the first time in international law, establishes a direct relationship between the child and the State that challenges the presumption that parents have rights of ownership over the child.¹ It renders the child visible as a subject of rights within the family, entitled to protection on his or her own behalf, and empowers the State to intervene, when necessary, to protect the rights of the child, in recognition that the best interests of children are not always protected by parents. The rights

and responsibilities of parents to provide direction and guidance to children are therefore not in consequence of their 'ownership' of the child, but rather a function of parenthood, until the child is capable of exercising those rights on his or her own behalf.

Assumptions about child development and evolving capacities of the child

Conventional child development theory influences current thinking based on five key assumptions:

- Child development is a universal process.
- Adulthood has normative status.
- Development goals are universal.
- Deviation from the norm indicates risk for the child.
- Childhood is an extended period of dependence in which children are passive recipients of adult protection, training, wisdom and guidance rather than contributors to their social environments.

More recent approaches to childhood studies have challenged these assumptions and the uniformity they have imposed on our understanding of how children develop. While the assumptions have contributed significantly to the debate, they fail to reflect the diversity of childhood experience and the extent to which cultural context impacts development.

Applying a rights-based approach to the evolving capacities of the child

The evolving capacities of children need to be understood and examined through three conceptual frameworks:

- Firstly, as a **developmental** concept, recognising the extent to which children's development, competence and emerging personal autonomy are promoted through the realisation of the Convention rights. In this sense it imposes obligations on States parties to **fulfil** these rights.
- Secondly, as a **participatory or emancipatory** concept emphasizing the rights of children to respect for their capacities and transferring rights from adults to the child in accordance with their level of competence. It imposes obligations on States parties to **respect** these rights.
- Thirdly, as a **protective** concept, which acknowledges that because children's capacities are still evolving, they have rights to protection on the part of both parents and the State from participation in or exposure to activities likely to cause them harm, although the levels of protection they require will diminish in accordance with their evolving capacities. It imposes obligations on States parties to **protect** these rights.

Application of the concept of children's evolving capacities

Respecting children's evolving capacities within the law

Societies require legal frameworks that prescribe the ages at which children acquire certain rights. The

Committee on the Rights of the Child, in its guidelines relating to Article 1, the definition of the child, acknowledges the growing autonomy of the child and the need to respect the gradual acquisition of independent exercise of rights. Accordingly, it requests information on the minimum legal ages set, for example, for legal and medical counselling without parental consent, medical treatment without parental consent, creating and joining associations, giving testimony in court, and participating in administrative and judicial proceedings. Conversely, it also seeks evidence that children are not forced to engage in activities that expose them to responsibilities, risks or experiences that are inappropriate or harmful in view of their youth. In other words, it could be argued that States parties are expected to introduce protective measures that acknowledge children's as yet 'unevolved' capacities.

However, the evidence that children do not acquire competencies merely as a consequence of age, but rather through experience, culture and levels of parental support and expectation, has implications for determining the most effective legal framework for respecting children's right to participate in and take responsibility for those decisions they are capable of, while also providing appropriate protection. There are a number of possible models, each with certain benefits and disadvantages:

- Provision in law of fixed, prescribed age-limits.
- Removal of all age-limits, substituting a framework of individual assessment through which to determine competence to exercise any particular right. Alternatively, the law could introduce a presumption of competence with the onus on adults to demonstrate incapacity in order to restrict a child's rights.
- Introduction of a model that includes age-limits but entitles a child who can demonstrate competence to acquire the right at an earlier age.
- Differentiation in law between specific rights – providing age-limits only for those rights that are at risk of being abused or neglected by adults – and introducing a presumption of competence with respect to other rights.

Approaches to assessing evolving capacities

The same thresholds of competence are not necessary for all decisions, nor are all aspects of competence relevant for all types of decision-making or responsibility. One approach would be to apply a principle of proportionality with a sliding scale of competency according to the seriousness of the decision. Where the risks associated with the decision are relatively low, it would be possible for children to take responsibility without demonstrating significant levels of competence. In order to overrule the child's expressed wishes it would be necessary to demonstrate that the child is not competent to understand the implications of the choice *and* that the consequent risks associated with the choice would be counter to the child's best interests.

One of the challenges associated with using the

assessment of children's evolving capacities as the basis for the exercise of rights is the lack of effective definitions of competence, compounded by a lack of availability of skilled personnel for its assessment. Much of the thinking in terms of competence assessment has taken place in the context of medical consent, although criteria developed in this field have equal relevance for many other areas of decision-making. The central elements of competence for decision-making relating to health are deemed to include:

- **Ability to understand and communicate relevant information.** The child needs to be able to understand the available alternatives, express a preference, articulate concerns and ask relevant questions.
- **Ability to think and choose with some degree of independence.** The child needs to be able to exercise a choice without coercion or manipulation and be capable of thinking through the issues for themselves.
- **Ability to assess the potential for benefit, risk and harm.** The child must be able to understand the consequences of different courses of action, how they will affect him or her, the risks involved and the short and long-term implications.
- **Achievement of a fairly stable set of values.** The child needs to have some value base from which to make a decision.

Creating environments to promote, respect and protect children's evolving capacities

Realising children's rights in accordance with their

evolving capacities can only be achieved through a holistic approach to implementing the Convention. Accordingly, it has implications for all rights, demanding significant changes at all levels of society. It represents a fundamental challenge to conventional attitudes towards children, questioning some of our deeply held assumptions about children's needs, children's development, protection of children and children's agency. In societies throughout the world, more could be done to create environments in which children achieve their optimum capacities and greater respect is given to children's potential for participation in and responsibility for decision-making in their own lives – within the family, in school, in respect of their own health care, in courts, in local communities, and in local and national political forums. Action is needed in law, policy and practice to promote cultural change in which the contributions children make and the capacities they hold are acknowledged.

Almost every sphere of children's rights merits further exploration in the context of the issues raised in this study – freedom of religion and association, freedom of information and access to the media, ages of criminal responsibility and sexual consent, the right to education and the nature of schooling, and the role of work and family relationships. The purpose of this study is to open discussion and promote debate in order to achieve a better understanding of how to promote the cultural change necessary so that children are protected appropriately in accordance with their evolving capacities, and also respected as citizens, as people, and as rights bearers.

Note

- 1 Holmberg, B. and J. Himes, 'Parental Rights and Responsibilities', in *Children's Rights: Turning principles into practice*, Petren, A. and J. Himes, (eds) Radda Barnen/UNICEF, Stockholm, 2000.

INTRODUCTION

From the moment of birth, a baby is in the process of extraordinarily rapid growth and development. As they grow up, children develop cognitive, physical, social, emotional and moral capacities, the acquisition of which influences communication, decision-making, exercise of judgement, absorbing and evaluating information, self-directed action, autonomous decision-making, extending empathy, awareness of others and foresight. While people continue to develop throughout life, all societies acknowledge a period of childhood during which children's capacities are perceived as evolving rather than evolved. A key difference between adulthood and childhood lies in the presumption as to the attainment of these capacities. An adult – at whatever age a society determines that to be – is legally presumed to have developed the necessary capacities in all these spheres to take responsibility for their own actions, irrespective of the reality of their competence. However, during childhood, the presumption is that, as children's capacities are evolving, they lack the competence to take responsibility for themselves. Children are therefore provided with social and legal protections that correspond with their perceived immaturity and vulnerability.

This study explores three themes in seeking to question how the adult world meets its responsibilities towards the realisation of children's rights in accordance with their evolving capacities: how to provide the social, economic, cultural and physical environment necessary for children's optimal development; how to encourage children's participation in decision-making and guarantee appropriate respect for their capacities; and how to protect children from an inappropriate burden of responsibility and harm as a consequence of their youth and 'still evolving' capacities.

Assessing the extent to which children have acquired capacity across the range of competencies is a highly complex process. It is influenced by how capacities are defined, by what levels of capacity are deemed necessary in order to participate in decision-making and exercise responsibility, and what levels of risk are deemed acceptable in any given environment. There are no easy or fixed answers to these questions. Children, at any given age, are a highly differentiated group and a wide range of factors impacts the development of their capacities, and how those capacities are viewed and interpreted by the world around them. Behaviours considered dangerous in one society are taken as the norm in another. Assumptions of responsibility deemed beyond a small child's capacities in one culture will be part of their daily experience in another. Some of these burdens of responsibility are demonstrably harmful to children, while others are mediated by their social acceptance.

Limitations imposed on children's experiences can deny them both the opportunity to develop and blind the adult world to the reality of what children are capable of achieving. Gender, for example, has a significant impact of assumptions and consequent limitations that children – especially girls – are likely to encounter. Support, encouragement and high expectations of children can enable boys and girls to achieve skills and competencies that would not be possible through threats and punishment. And children with intellectual, physical or sensory impairments will often develop their capacities through different routes and with differing outcomes.

Constructions of 'childhood' exist, although differently defined in all societies, which lead adults to see children through a set of pre-determined assumptions that inform both how they are treated

and what they are deemed competent to achieve. The tendency is to judge children's competencies against a set of adult standards and find them lacking, rather than to value what children offer as children. These assumptions can act as a filter that inhibits the capacity or willingness of adults to see or value what children do, and to restrict their opportunities to acquire competencies. The consequent invisibility and denial of children's capacities then serves to reinforce the original assumptions. Despite assumptions of incompetence, many boys and girls throughout the world are simultaneously burdened with excessive responsibility that is beyond their capacities, placing their safety and development at risk. They are required to participate in harmful activities but, because of their status as children, they are denied the autonomy through which to negotiate any control over those experiences. They are, accordingly, rendered doubly vulnerable.

Children cannot, or should not, be categorised under a set of blanket assumptions that either exaggerate or undervalue their development. It is obvious, for example, that small children do not have the same capacities as older children or adults. The acquisition of language develops rapidly through a child's early years. And lack of knowledge and experience among children entitles them to greater levels of protection than that afforded to most adults. Children are entitled to respect for their capacities at any given age. Failure to do so is to deny them respect and dignity as individuals. In a similar way, undifferentiated assumptions about racial groups, women, people with disabilities, or older people are demeaning and disrespectful, and have served to perpetuate discriminatory practices.

A commitment to respect the human rights of children requires a fundamental review of preconceptions that regard childhood as a period of lesser status. The Convention on the Rights of the Child, by recognizing children's evolving capacities to exercise their rights and their right to have their views taken seriously, introduces an explicit challenge to such constructions of childhood. The solutions are far from self-evident. It is not possible to prescribe defined ages at which all children need greater or lesser protection or opportunities for assuming responsibility. Nor is it possible to create sufficiently flexible legal and social frameworks through which to accommodate the widely varying capacities of children over different aspects of their lives. The former flies in the face of the evidence about how children's capacities evolve. The latter risks exposing children to exploitation and abuse.

However, it is possible to begin to listen to children and to acknowledge and respect what they are capable of, and it is possible to learn from the evidence about how to create environments in which children thrive. It is also possible to involve children as agents in their own development and protection. This approach is encapsulated clearly in the recent Statement of Common Understanding, developed by the UN, to guide a human rights-based approach to activities and programmes, which asserts as a

basic requirement that 'Programmes assess the capacity of rights-holders to claim their rights, and of duty-bearers to fulfil their obligations. They then develop strategies to build these capacities'.² This requirement is equally relevant for children. So too is the Statement's additional emphasis on the imperative to recognise people as key actors in their own development.

Many different disciplines contribute to our understanding of how children acquire capacity. Developmental psychologists have long studied how, why and when children develop. Anthropologists have contributed to our understanding of how differences across cultures influence the understanding of childhood and consequent treatment of children. Lawyers and medical practitioners have grappled with methods of defining competence in order to determine when a child can assume responsibility for decision-making. Sociologists have begun to examine the concept of childhood and the extent to which it is socially rather than merely biologically constructed. This study seeks to draw on the range of different disciplinary expertise to explore some of the challenges raised in applying the concept of evolving capacities to the exercise by children of their rights. It will hopefully have relevance to practitioners, academics, policy makers, politicians and children's rights advocates.

Perhaps the most critical challenge is to create a better dialogue between adults and children about how the adult world can meet its responsibilities to fulfil, respect and protect children's rights in accordance with their evolving capacities. It is hoped that this publication will set the ball rolling, and provoke debate in order to enhance understanding of childhood, children, and the balance between adult and children's roles in the exercise of rights. Children also need to be part of that debate. Understanding the concept of evolving capacities and then applying the implications for the rights of children is a complex process with implications, for example, in family law, juvenile justice, freedom of religion, sexual consent, education, employment, participation and access to information.

The study highlights some of these issues, but all merit further exploration. Following publication, a series of regional workshops will be convened to draw together professionals from different disciplines, and children, to explore critical themes and next steps. Some of the questions that could form the basis of these future discussions include:

- What are the most effective strategies for promoting respect for children's capacities to exercise their rights while providing appropriate levels of protection?
- How far should the State intervene in family life to promote respect for children's rights in accordance with their evolving capacities, to ensure neither inappropriate demands nor inadequate autonomy?
- What are the criteria for assessing capacity and how far should levels of risk influence the capacity needed to exercise rights?

- What guidelines can be applied to balance the comparative risks of under and over-protection?
 - To what extent are prescribed age-limits the most effective mechanism for protecting children against harm and exploitation?
 - Is the imposition of legal age-limits that restrict rights, irrespective of children's own levels of competence, justified to provide protection?
 - What are the implications for legislation and policy of widely differing capacities among children between and within Western and developing countries?
 - How far should children themselves be involved in determining the boundaries of and the strategies for providing their own protection?
- What are the implications of recent research into how children acquire capacities for the prevailing view that children should not work?
 - How can school environments incorporate evidence about the value of children's participation development?
 - How can appropriate boundaries be established between respect for cultural diversity and context in child development, while also ensuring respect for the universal standards embodied in the Convention on the Rights of the Child?
 - To what extent can lack of respect for children's evolving capacities be understood as a form of discrimination? Is this a useful framework to bring to bear on the issue?

Note

- 2 Developed at the Inter-Agency Workshop on a human rights-based approach in the context of UN reform, 3-5 May 2003, cited in *State of the World's Children 2004*, UNICEF, New York.

Part One

**UNDERSTANDING THE CONCEPT
OF EVOLVING CAPACITIES**

SECTION 1

THE CONCEPT OF EVOLVING CAPACITIES OF THE CHILD

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, ***in a manner consistent with the evolving capacities of the child***, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention.

1.1 Emergence of the concept in human rights law

The Convention on the Rights of the Child introduces for the first time in an international human rights treaty, the concept of the ‘evolving capacities’ of the child. Article 5 of the Convention states that direction and guidance, provided by parents or others with responsibility for the child, must take account of the capacities of the child to exercise rights on his or her own behalf. This principle has profound implications for the human rights of the child. It has been described as a new principle of interpretation in international law, recognising that as children acquire enhanced competencies, accordingly, there is a reduced need for direction and a greater capacity to take responsibility for decisions affecting their lives.³ The Convention recognises that children in different environments

and cultures who are faced with diverse life experiences will acquire competencies at different ages, and their acquisition of competencies will vary according to circumstances. It also allows for the fact that children’s capacities can differ according to the nature of the rights to be exercised. Children, therefore, require varying degrees of protection, participation and opportunity for autonomy in different contexts and across different areas of decision-making.

The concept of evolving capacities is central to the balance embodied in the Convention between recognising children as active agents in their own lives, entitled to be listened to, respected and granted increasing autonomy in the exercise of rights, while also being entitled to protection in accordance with their relative immaturity and youth. It provides the framework for ensuring an appropriate respect for children’s agency without exposing them prematurely to the full responsibilities normally associated with adulthood.

1.2 Evolving capacity, participation and the principle of autonomy

It is important to examine the inter-relationship between the concept of evolving capacity embodied in Article 5 and the concept of participation contained in Article 12 of the Convention. Article 12

asserts that 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'. Considerable attention has been given over the past decade to understanding and seeking to implement this principle. Indeed, the Committee on the Rights of the Child has identified Article 12 as one of the central underlying principles of the Convention, demanding a fundamental shift in the conventional approach of casting children as passive recipients of adult protective care.⁴ Instead, it requires a recognition of children as active agents, entitled to participate in decisions that affect their lives.

All children capable of expressing a view are entitled to do so and to have it taken into account. Article 12 does not restrict expression to formal language. Views can be expressed in many ways, for example, through emotions, drawing, painting, singing, drama. Very young children, even babies, as well as children with profound learning difficulties, are capable of expressing views. A higher threshold of competence is required when determining what weight should be attached to the child's views. Here, Article 12 explicitly states that the greater the age and capacity of the child, the more seriously their views should be considered.

Four levels of involvement have been identified in the decision-making process:⁵

- To be informed.
- To express an informed view.
- To have that view taken into account.
- To be the main or joint decision-maker.

Article 12 implies that all children capable of expressing a view are entitled to the first three levels. Although it makes no explicit provision for the right to information, it could be argued that information is a necessary part of the obligation to '*assure...the right to express...views freely*'. However, it does not extend rights to the fourth level. In other words, Article 12 asserts the child's right to be involved in a **process of participation** in all matters affecting him or her, but adults retain responsibility for the outcome. The outcome will be decided by adults but informed and influenced by the views of the child.

Article 5 further emphasises the role of parents or other care-givers in terms of the provision of direction and guidance in the **exercise by the child of his or her rights**, consistent with their evolving capacity. In other words, it implies a transfer of responsibility for decision-making from responsible adults to children, as the child acquires the competence, and of course, willingness to do so. Article 5 makes no mention of age as a factor in determining levels of capacity, thereby recognizing that the demonstration of the requisite skills, knowledge and understanding is crucial to the exercise of rights.

This process of transferring the exercise of rights to children involves recognition of their emerging autonomy. The concept of autonomy is fundamental to and highly valued within democratic traditions, and enshrined in those civil and political rights that protect individual liberties by the State. It is central to laws that assert individuals' personal and physical integrity, and respect for people to make their own choices, express their own views and take responsibility for their own lives.⁶ However, the recognition of autonomy rests on a presumption of the competence of individuals to make informed and wise choices and decisions.⁷ Such a presumption does not, in general, extend to children. Instead, parents are vested with rights to take decisions on the child's behalf, either until they judge it appropriate to hand over responsibility to the child or until a prescribed age-limit determined by law. Article 5 of the Convention does not reverse that presumption of incompetence in children but it does place an onus on States parties to make certain that children's capacities are respected. It thereby offers greater potential for the principle of autonomy to be more fully extended to children, while at the same time continuing to provide the necessary protective framework to avoid exploitation, harm or abuse.

The exercise of autonomy requires capacity, desire and opportunity. With regard to the desire to take responsibility for oneself, children must not be forced against their will to take decisions they do not feel competent or willing to take. Indeed, it is one of the rights of childhood that children are not burdened with inappropriate levels of responsibility. Many children, however, do want to exercise greater autonomy in their day-to-day lives, and the presumption that they lack competence serves to deny them the opportunities to acquire it. Article 5, in conjunction with Article 12, stresses that children are entitled to support, encouragement and recognition in taking decisions for themselves in accordance with their wishes and capacity, as well as in the context of their family and community.

The emphasis on autonomy in human rights discourse has raised concerns in many non-Western countries where the cultural emphasis focuses on mutuality, reciprocity and inter-dependence rather than individuality. However, recognition that the individual exercise of rights must be undertaken with regard to the equal rights of others is embedded in human rights law. Article 29 of the Universal Declaration of Human Rights states: 'Everyone has duties to the community in which alone the free and full development of his personality is possible'. The significance of the word 'alone' here is that it recognises that individuals do not exist as isolated beings but live in societies, towards which they must act responsibly if they are to develop their true humanity.⁸ This perspective is exemplified by Gerwith, who argues, 'The concept of human rights ...entails a mutualist and egalitarian universality: each human must respect the rights of all others while having his rights respected by all others, so there must be a mutual sharing of the benefits of rights and the bur-

dens of duties...By the effective recognition of mutuality entailed by human rights the society becomes a community. So the antithesis between rights and community is bridged'.⁹ Understood in this way, it becomes clear that human rights affirm rather than challenge principles of inter-dependence and reciprocity. This is true for adults and for children. Children, in acquiring greater respect for their capacity to exercise rights, must necessarily extend comparable respect for the exercise of rights by others.

It is important to emphasise that the realisation of children's rights is not contingent on the ability to exercise agency, or on the acquisition of a given age. All the rights embodied in the Convention on the Rights of the Child extend to all children. The issue in question is to what extent children themselves exercise those rights, and what responsibilities are undertaken on their behalf by parents or other caregivers, and how the process of transition takes effect.

1.3 Balancing the rights of the child and the family

In order to understand the implications of the concept of the evolving capacities of children in the context of the family, it is necessary to recognise that the Convention is underpinned by three important premises:

- Firstly, children are subjects of rights. It is in order to protect and promote those rights that parents themselves are ascribed rights and responsibilities with respect to their children.
- Secondly, as children's capacity evolves, parental rights gradually cede to the child and she or he is entitled to exercise those rights on her or his own behalf.
- Thirdly, because rights attach to the child, they exist irrespective of where the child is: they apply equally at home, at school, in all institutions and in the public arena. Accordingly, the State has a key role to play in providing the necessary legal and policy framework to promote the universal and consistent realisation of rights for children. It also has obligations to intervene where necessary to protect children from neglect or abuse of rights by parents and other adults with responsibilities for children. While most parents strive to act in their children's best interests and seek to protect their rights, this is not always the case. There must therefore be mechanisms in place, through legislation and access to the courts, through which children, or the State on their behalf, can enforce those rights when they are breached by parents.

The principle of respect for family autonomy is well established in international law. It is reflected in Article 17 of the International Covenant of Civil and Political Rights (ICCPR), Article 8 of the European Convention on Human Rights, and Article 11 of the African Charter on Human Rights. In its General Comment on Article 24 of the ICCPR addressing pro-

tection of the child, the Human Rights Committee states that 'Responsibility for guaranteeing the necessary protection lies with the family, society and the State. Although the Covenant does not indicate how such responsibility is to be apportioned, it is primarily incumbent on the family, which is broadly interpreted to include all persons comprising it in the society of the State party concerned, and particularly on the parents, to create conditions to promote the harmonious development of the child's personality and his enjoyment of the rights recognised in the Covenant'.¹⁰ In other words, under international law, children are placed under the primary jurisdiction of their parents, restricting state responsibility to intervene only when the family is perceived to be failing to protect the child's fundamental rights. This privatisation of the family has allowed children to remain largely invisible as rights bearers.¹¹

Recognition of the primary responsibility of the parents for their children is re-affirmed, and indeed central to the underlying philosophy of the Convention on the Rights of the Child. The Preamble upholds the family as 'the fundamental group of society and the natural environment for the growth and well-being of all its members, and particularly children'. A number of articles emphasise parental rights and responsibilities and impose clear limits on state interference in family life. Article 18 provides that parents have the primary responsibility for the upbringing and development of their children. Article 9 imposes strict limitations on the power of the State to separate children from their parents against their will while Article 10 places obligations on the State concerning family reunification. And Article 5 stresses that States parties must respect the rights and responsibilities of parents to direct and guide their children. Accordingly, in its commitment to respect the principle of family autonomy, the Convention on the Rights of the Child is consistent with other human rights treaties.

However, the Convention also incorporates a vital additional dimension to the status of the child within the family. Discussions of the Working Group during its drafting stages addressed the fact that the conventional approach of minimum intervention in family life rendered children vulnerable to abuse by family members.¹² While the articles cited above continue to recognise the importance of protecting families from arbitrary intervention by the State, the Working Group also insisted that the State must not allow the family to be given total control over the child: Protection of the family should be equally balanced with the protection of the child within the family.¹³ Accordingly the final text of Article 5, addressing parental responsibilities, incorporates the central concept that the State must respect rights and responsibilities of parents, or other caregivers, to provide 'appropriate direction and guidance in the exercise by the child of their rights in a manner consistent with the evolving capacities of the child'. Alston argues that the insertion of this phrase reflects the delicate balance between the rights of children and the correlative rights of par-

ents.¹⁴ Parental rights and responsibilities are not unbounded. By inserting the word 'appropriate', Article 5 removes any suggestion that parents or other caregivers have *carte blanche* to provide whatever direction or guidance they happen to believe suitable. It must be directed towards promoting respect for the rights of the child, and parents must respect the extent to which the child is capable of exercising those rights on his or her own behalf. Similarly, Article 18 imposes certain boundaries on the upbringing and development of children, stressing that 'the best interests of children will be (the parents) basic concern'.

The Convention establishes a direct relationship between the child and the State, which challenges the presumption that parents have rights of ownership over the child.¹⁵ It renders the child visible as a subject of rights within the family, entitled to protection on his or her own behalf. The privacy of the family is no longer considered sacrosanct: The State is empowered to intervene to protect the rights of the child, in recognition that the best interests of children are not always identical with those of parents, and will not always be protected by parents. The rights and responsibilities of parents to provide direction and guidance to children are, therefore, not in consequence of their 'ownership' of the child, but rather, a function of parenthood, until the child is capable of exercising those rights on his or her own behalf.

The role of the State in intervening in what are traditionally seen as private matters between parents and children is a highly sensitive issue. Indeed, there has been a sustained critique of the Convention from some quarters arguing that it undermines parents' authority to protect children and places them merely in the position of caregivers, required to observe respect for children's rights.¹⁶ It is argued that by recognising children's emerging autonomy, the Convention encourages children to become an adversary of their parents.¹⁷ Concerns have also been raised that recognition of children as rights-bearers is rooted in Western philosophy with its traditions of individuality, and as such is at odds with the cultures of, for example, South Asia, which place emphasis on the primacy of the family. Interestingly, the Indian Government takes the view that the conceptual framework of the Convention on the Rights of the Child, with regard to the child, the family and the State, is fully compatible with its Constitution and other laws.¹⁸ It draws on an analysis that suggests that its philosophy incorporates tenets that are more familiar to the indigenous legal traditions of India, which have been modified through centuries of colonial rule and may need to be restored if some of the concepts of the family embodied in the Convention are to be accepted.¹⁹

Arguments that respecting children's rights will undermine the family fundamentally misunderstand the aims of the Convention. In the *Manual of Human Rights Reporting*, it is argued that 'parents are particularly well-placed to build the capacity of children to intervene in a growing manner in the different

stages of decision, to prepare them for responsible life in a free society informing them, giving them the necessary guidance and direction while assuring children the right to express views freely and give those views due weight. Children's opinions will thus be taken into account, although not necessarily endorsed, and children will be given the possibility of understanding the reasons for a different decision being taken'.²⁰ In other words, parents play a vital role in the development of their children, providing essential direction and guidance until such time as the child his or herself can assume partial or full responsibility for the exercise of their rights.

The role of the parent or primary caregiver is thus to manage and guide that balance in the best interests of children. In its General Discussion day on 'The Role of the Family', the Committee on the Rights of the Child stressed the importance of the family in the realisation of the child's civil rights: 'Traditionally, the child has been seen as a dependent, invisible and passive family member. Only recently has he or she become 'seen' and furthermore, the movement is growing to give him or her the space to be heard and respected. Dialogue, negotiation and participation have come to the forefront of common action for children'.²¹ There is potential for conflict when children's assessment of their capacities for independent decision-making do not concur with those of their parents. However, family environments in which children are listened to, respected, trusted and encouraged to take increasing levels of responsibility as they demonstrate capacity are less likely to promote conflict.

1.4 Interpretation of evolving capacities by the Committee on the Rights of the Child

The Committee on the Rights of the Child has consistently stressed both the importance of recognising the child as a subject of rights in accordance with both Articles 5 and 12-16, and also the realisation of rights as essential to the optimum development of the evolving capacities of children. In its guidelines to States parties for periodic reports, the Committee requests information on how direction and guidance to the child are provided in a manner consistent with the child's evolving capacities. It further requests information on how knowledge and information about the evolving capacities of the child are conveyed to parents or other persons responsible for the child.²² Much of the information sought by the Committee in the guidelines relating to Article 1, the definition of the child, focuses on recognition of the growing autonomy of the child and the need to respect the acquisition of independent exercise of rights accordingly. In this regard, it requests information on the minimum legal ages set, for example, for legal and medical counselling without parental consent, medical treatment without parental consent, creating and joining associations,

giving testimony in court, and participating in administrative and judicial proceedings.

Conversely, it also seeks evidence from States parties that children are not forced to participate in activities that expose them to responsibilities, risks or experiences that are inappropriate or harmful in view of their youth. In other words, it could be argued that States parties are expected to introduce protective measures that acknowledge children's capacities as yet 'unevolved'. Accordingly, the Committee seeks evidence that States adopt adequate protection measures through legal age-limits with respect to ages of criminal responsibility, conscription and voluntary enlistment into the armed forces, participation in hostilities, sexual consent, and minimum age of employment. The Committee also stresses the importance of non-discrimination with respect to assumptions of maturity; for example different ages of marriage or sexual consent between boys and girls²³. It regularly raises the issue of how legislation and practice take account of the capacity of the child to exercise his or her rights.²⁴

Acknowledgement of the importance of respecting the evolving capacities of the child emerges strongly in the recent General Comments published by the Committee. In its General Comment on Article 29(1), the Committee states: 'Education should be child-friendly, inspiring and motivating the individual child. Schools should foster a humane atmosphere

and allow children to develop according to their evolving capacities'.²⁵ Similarly, the General Comment on HIV/AIDS emphasises children's entitlement to participate in raising awareness of HIV/AIDS and developing policies and programmes to address the issues in accordance with their evolving capacities.²⁶ It stresses the need for health services to be developed with regard to the evolving capacities of the child, and for respect for children's evolving capacities in determining issues of consent to testing and participation in research. It recommends that all programmes and policies addressing HIV/AIDS explicitly recognise children, in the light of their evolving capacities, and their rights. And the General Comment on adolescent health also recommends the need for minimum ages of sexual consent, marriage and medical consent that 'closely reflect recognition of the status of human beings under the ages of 18 as rights holders in accordance with their evolving capacity age and maturity'.²⁷

In summary, the Committee has consistently engaged in dialogue with governments about how their legislation and policy addresses the evolving capacities of children. However, given the lack of exploration of the concept and its application to the exercise of rights to date, the Committee, along with others concerned with the rights of children, have been hampered in their analysis of the appropriate boundaries of protection and participation of children.

Notes

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SECTION 2

CHILD DEVELOPMENT AND THE EVOLVING CAPACITIES OF THE CHILD

The ways in which children's evolving capacities are understood and recognised vary widely in history and place, as do the goals for their development. There is no universal definition of childhood. The ages at which different societies define children as competent and mature vary widely. The expectations placed on children, and therefore assumptions about capacity, differ depending on the economic, social and cultural context in which they are living. The issue is made more complex by competing theories in developmental psychology about how children develop, what influences the process of development and the part that children themselves play in their own development. All theories are underpinned by a recognition that children's capacities do evolve. The differences lie in the understanding of when and how they do so and what informs the process. It is not possible in this paper to do justice to the complexity and range of that work, but the following section seeks to provide a brief overview of two contrasting theoretical approaches that inform current thinking in child development, and accordingly impact on understanding and interpretation of the concept of the evolving capacities of the child.²⁸

2.1 Conventional stage theories

Some of the more dominant theoretical approaches influencing current understanding of childhood are rooted in assumptions that development is a staged process, whether with respect to physical, moral, social, emotional or intellectual capacity. This tradi-

tional approach has often been linked to research methods influenced by the biological and physical sciences.

- Observing children using an animal model of research.
- Examining children in laboratories and away from their everyday context.
- Using artificial tests and pre-set and hypothetical questions to assess competence.
- Testing children against presumed norms.
- Surveying adult views of children rather than those of children themselves.
- Searching for causes of children's behaviour.

Piaget, one of the most influential theorists, argued that children's development takes place as a series of discrete stages, each associated with an approximate age range: sensory motor (birth to 18 months), pre-operational (18 months to 7 years), concrete operational (7 to 11 years) and formal thinking (11 years and older). For example, he argued that below the age of four years, children are incapable of understanding rules or exercising moral judgments, and that young children are unable to envisage situations from a point of view other than their own. His thinking has been taken up and reinforced by subsequent generations of researchers, and has had a profound influence on the work of all professions involved with children.

Most of the research on which conventional theories are based originates in European and North American contexts and reflects presumptions about childhood in those societies. These theories assume,

for example, that childhood is a period of time for nurturing, care, play and learning in the family and the school, and free from the demands of responsibility or employment. However, this is not the reality for many millions of children throughout the world. And while these studies produced a wealth of material about child development throughout the course of the twentieth century, what was lacking was information on how context influences children's behaviour and their relationship to the world around them, including to researchers themselves.²⁹ Nevertheless, these constructions of child development have had profound impact on our assumptions about and responses to children. Their legacy – which is now being challenged by more recent approaches to childhood studies – continues to influence current thinking in five key ways:³⁰

- Child development is a universal process.
- Adulthood has normative status.
- Goals of development are universal.
- Deviation from the norm indicates risk for the child.
- Childhood is an extended period of dependence in which children are passive recipients of adult protection, training, wisdom and guidance, rather than contributors to their social environments.

2.1.1 Childhood is a universal process

The model of childhood arising from 'staged' theories is characterised by the assumption of a natural order in which children are dependent and there are incontrovertible rules governing progress towards adulthood.³¹ The natural laws governing this progress are similar to those governing the physical world, in that biological and psychological factors play a stronger role than social or cultural forces.³² Accordingly, it is possible to prescribe what is normal development. This view takes no account of the impact of factors such as family, age of siblings, culture, power, status or social and economic context on the process of children's development.

2.1.2 Adulthood has normative status

The developmental image of childhood derives from a theoretical framework in which adulthood has normative status; children are in a state of immaturity characterised by being irrational, incompetent, asocial and acultural, and passive and dependent.³³ The assumption is that children lack moral status, only gaining it through a process of socialisation by the time they reach adulthood.³⁴ Significantly, much influential thinking in developmental psychology has also embodied the view that development ceases with the acquisition of adulthood. The domination of these theories in constructing a model of incompetent childhood has provided a 'scientific' justification for exporting a universal framework for protecting children from participation in the adult world.³⁵

To a significant extent, this construction of children

as 'in training' has masked the extent to which they are capable, have agency and take responsibility in their own lives. It relies on an assumption of incompetence in children, with the onus on children themselves either to demonstrate capacity, or to pass through an age barrier, in order to be afforded rights in respect of decision-making. Adults are then perceived as translators, understanders and interpreters of children's behaviour.³⁶ In this process, there tends to be an overarching assumption that in any given situation adults are right and children are wrong. The 'deficit' model of childhood renders much of children's actual agency invisible. Children are not taken seriously because it is believed that they do not really know what they want or need, and the perception is of children as objects or possessions whose views do not really matter.³⁷ The potentially devastating impact of this failure to respect the validity of children's experiences is illustrated in a series of child abuse inquiries in residential care in the UK. It was found that an institutional culture existed in which children's accounts of abuse were systematically discredited in favour of adults' denials.³⁸ Without fear of exposure, the perpetrators were able to continue their abuse and a climate of impunity prevailed over a period of thirty years.

2.1.3 The goals of child development are universal

Conventional child development theory reflects Western assumptions that the goals of development are the attainment of personal, social and political autonomy, independence and self-sufficiency. They also view the attainment of rational thinking as an ultimate goal in development. However, these goals are far from universal. In most cultures in the world, inter-dependence and integration are more valued as the outcome of development. In part, these goals are driven by social, economic and cultural imperatives. Certainly, the very shifting nature of assumptions about children's role and place in society testifies to the lack of any universality in their nature.

Modern Western economies, for example, require a workforce that is competitive, highly educated, creative, flexible, communicative and independent; in the past, by contrast, obedience, loyalty and punctuality were more highly valued.³⁹ Accordingly, children are expected to remain for an extended period in education rather than to participate at an early age in the labour market. The result is reduced responsibility for children, and a far greater degree of dependency. This development is associated with a shift in perception to children as an emotional, rather than an economic asset.⁴⁰ By contrast, in most developing countries, many very young children are actively engaged in domestic and paid work, often with high levels of responsibility. However, it is important to recognise that within all societies, children's experience is more nuanced. In many developing countries, a high premium is placed on children's education among those middle class families who can afford to provide it – and of course, such highly educated children are necessary for economic

growth. More recently, in the West, Solberg found that the levels of children's contribution to housework increased significantly in Norway, in line with women's increasing participation in the labour market.⁴¹ More than two-thirds of children had carried out some form of housework on any given day. This demonstrates that, in both the West and in most developing countries, economic and social necessity, rather than objective assessments of capacity, are key determinants of whether children are perceived as competent to undertake responsibilities within the family, and the goals of child development are adjusted accordingly.

Within all these different communities, the goals prioritised for child development tend to be justified as in children's best interests. Where children are required to work, they are viewed as benefiting developmentally from working: Work is considered to promote the transmission of knowledge and skills, social integration and a sense of self worth and self efficacy. Where children are excluded from employment, this too is justified in terms of their need for protection from the harsh realities of the world of work and the importance of a period of play and freedom from responsibility. It is also true that, in many developing countries, child development goals are understood in terms of the best interests of the family and community within which a child lives.

The goals for development in different societies also influence the way in which parents structure their children's environment, and the outcomes that children then achieve. For example, research with mothers in the US and Japan reveals significant differences in the skills and behaviour they expect their children to have acquired by the age of five years. In Japan, the expectations focused on emotional control, respect for the status and authority of parents and certain areas of self-sufficiency. The American mothers expected earlier achievement of the social skills of empathy, negotiation, initiative, assertiveness and persuasiveness.⁴² In another study comparing perspectives from parents and teachers in Nigeria and the US on the most important skills for a four-year-old to learn, the Americans emphasised the language and social skills, whereas Nigerians placed much greater priority on acquiring pre-academic skills.⁴³ Hoffman found that whereas parents in the US emphasised goals of becoming a good person, being self-reliant and independent, parents in Turkey, Indonesia and the Philippines placed greater stress on deference to elders and obedience.⁴⁴ Evidence from Western countries indicates that small children strive for increasing control over their actions such as dressing and toileting, whereas in Mexico, toddlers acquire these skills by watching and imitating with a minimum of fuss.⁴⁵ And in West Bengal, one study found that the emphasis in childcare was in relationship to others and not in developing qualities specific to the child as an individual.⁴⁶ Mothers and older siblings caring for younger children use non-confrontational means of directing the child to learn the rules in relating to

others. Childcare is characterised by tolerance, in which caregivers do not react to 'tantrums, mischief, abusive language, manifestations of infantile sexuality, who make minimal demands on the infant and seldom engage in a battle of wills'.⁴⁷ The process of children's development is contingent, not on innate and universal learning, but rather on the nature of their experiences, the expectations of adults around them and their access to adult support. Both the type of skills and the ages at which they are acquired are influenced by the value attached to them within the child's immediate environment.

2.1.4 Failure to conform indicates risk for the child

Implicit in an approach that assumes an invariant staged process of development is the view that behaviours that fall outside those parameters are deviant, or potentially harmful to the child. Such approaches rest on assumptions that it is possible to prescribe the ideal or appropriate conditions in which children will achieve their optimum development. The application of these assumptions has had widespread repercussions for millions of children.

The treatment of many children from minority communities reflects a pathologising of their cultures and communities, with a consequent pattern of 'rescuing' them in order to promote their optimum development. Examples are manifold. In Romania, for example, many Roma children were placed in special schools because their poorer grasp of the Romanian language was equated with limited intellectual ability and poor parenting practice. In Canada, there was, until relatively recently, a widespread practice of removing children of indigenous communities from their parents and placing them in residential schools because of generalised assumptions that their parents were incapable of providing appropriate standards of care. The assumption of fixed development stages also pathologises many children with disabilities whose capacities may, for a variety of reasons, evolve more slowly or in different ways from the majority of children in a given population. The fact of their difference is viewed as evidence of incapacity to develop. In many societies, particularly in the former Soviet countries, the failure of such children to comply with prescribed norms of development condemned them to abandonment in institutions in which all possibility for fulfilment of their capacities was denied.

Furthermore, as these theories have been developed by researchers observing the very particular childhoods experienced by children in economically advanced Western societies, notably Europe and North America, they reflect the culture, context and assumptions of that environment. One particularly significant example can be seen in the prevailing assumption that school is a more appropriate context for children to develop and acquire competencies than work.⁴⁸ This view has increasingly informed the international agenda where there is a

growing consensus that work, per se, is detrimental to children's development. Indeed, Boyden argues that the Western dominated construction in which work is seen as a harmful imposition on children has pathologised the reality of childhood for the majority of the children in the world for whom work is an integral part of their lives.⁴⁹

2.1.5 Children are passive players

Conventional child development theories tended to construct children as moving through a process of acquiring maturity according to pre-determined biological and psychological forces, actively acquiring an understanding of their world, with little recognition of their capacities or agency within it. Presumptions of children as immature learners have led to a failure to value or witness the behaviours they exhibit that testify to their active participation in shaping their own and others lives around them. James and Prout, for example, argue that because much research into children's lives in the developed world has focused on the child's cultural world – the playground, or child-to-child relationships – it gives too little attention to children's relationships with adults. In consequence, it affirms the view of children as different, inhabiting a separate and discrete world from adults, and fails to recognise the extent to which children do inform and influence adult behaviours and decision-making and demonstrate capacity to exercise agency in their own lives.⁵⁰

2.2 Cultural theories

Over the past 20 years, theories about a universal process of child development, which can be applied to children in all cultural environments, have been increasingly challenged. Growing critiques have been made of their reliance on experiments conducted in contexts divorced from children's reality, leading to a consistent under-estimation of children's capacities. These critiques question not only the assumptions of universal applicability of research based on a limited range of childhood experiences from a limited cultural environment, but also the failure to reflect the complexity of factors influencing children's acquisition of competencies. Furthermore, they challenge the construction of children as passive players, arguing instead that children take part in the social world and possess individual agency, capable of interpreting and influencing their own lives.⁵¹

Increasingly, developmental psychologists are applying a theoretical framework in which child development is understood as a cultural process and childhood is understood as a product of specific economic, social and cultural processes.⁵² One such approach has been conceptualised as the developmental niche, which identifies three elements within children's environments that influence their development:⁵³

- **The physical and social settings they inhabit** – The family, social patterns, and organisation of their daily lives.
- **The culturally regulated customs and child-rearing practices** – Arrangements for care and education, attitudes towards play, discipline and training.
- **The beliefs or ethno-theories of the parents** – Goals and priorities for children's development and views on how these can be achieved.

This construction has some limitations because children do not necessarily inhabit mono-dimensional environments but often move between different contexts at home and in school. It is also necessary to acknowledge that children themselves are active contributors to their own developmental niche. It does, nevertheless, offer a framework for understanding the process of child development in light of differing goals, practices and circumstances.⁵⁴ Cultural theories acknowledge that all environments are socially constructed and that there is nothing natural about any particular model of child rearing. The people with whom children establish close relationships are themselves products of their own culture, beliefs and circumstances, which in turn shape the way they care for their children.

What these cultural frameworks offer is a more complex understanding of how children develop and what influences that process. They challenge the view that certain behaviours, thinking and social relationships can be ascribed as 'normal' at any given age, and they challenge assumptions that it is possible to prescribe what is likely to be appropriate or harmful to a child's development without understanding the context in which it arises, the underlying values and the prior experiences of learning. Woodhead observes that 'the implication of accepting that child development has to be understood as a cultural process is that benchmarks are not intrinsic, fixed or prescribed. They are extrinsic, historically specific and negotiable within a framework of promoting children's rights'.⁵⁵

Notably, research methodologies adopted by these more recent approaches differ significantly from those employed by traditional development and are characterised by:

- Use of open questions and narrative.
- Observation and communication with children as people.
- Meeting with children in their everyday environments.
- Exploration of children's own views, explanations, reasons and understanding of their world.
- Analysis of motives and contextual reasons for children's behaviour.
- Comparative analysis of varying childhoods in different countries, cultures and contexts.
- Critical examination of research about children, including a critique of values and theoretical underpinnings.

Whereas conventional developmental research was

founded on a belief in the pursuit of objective knowledge about children's nature and needs, the cultural theorists tend to be more critical, as well as more egalitarian both in their methods and their conclusions.

2.3 Summary

It is clear that a universal, prescriptive and deterministic conception of a linear process of child development applicable to all children is inadequate to reflect the complex realities of children's acquisition of competencies. Indeed, the concept of child development, as well as the concept of childhood itself is, to a very large extent, a social rather than a biological construct.⁵⁶ Parent's aspirations for their children's development, the expectations and demands placed on children, the cultural, economic and social environments in which they grow up, as well as their own unique life experiences, all impact on the ranges and level of capacities that children acquire and exercise. Moreover, a growing body of research testifies to the active role that children themselves play in the development of their own skills, the negotiation of their day-to-day lives and the levels of responsibility they accept.

The process of development is dynamic, influenced by a wide range of factors, not least, the child him or herself. Prevailing assumptions about children's capacities impose static judgements and measurements about 'normal' stages defined by Western standards and lead to a pathologising of children who fall outside the 'normal' parameters. Further, where those parameters are defined and constructed by adults observing children in isolation from adults, they widely fail to acknowledge the relevance and implications of children's interactions with adults. They also rely on adult assumptions and interpretations of children's own social participation, which may be very different from the perception held by children themselves.

Theories in developmental psychology have moved beyond these traditional prescriptive models to embrace a more cultural, social and contextual understanding of how children grow up (elaborated in Section 3). However, these ideas have not sufficiently permeated the wider world to influence law, policy and practice impacting on children's lives. In many areas of social policy, for example, education, early childhood development, juvenile justice, parent education and child work, thinking remains strongly influenced by overly prescriptive assumptions about children's development.

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SECTION 3

IMPLICATIONS OF CHILDREN'S EVOLVING CAPACITIES FOR THE REALISATION OF THEIR RIGHTS

In light of the growing body of evidence about the impact of culture and context on children's development, it is not possible to adopt a universal prescription as to either the appropriate environments in which children will thrive, or the ages at which they will acquire competencies with respect to cognitive, moral, social or emotional development. Yet the Convention on the Rights of the Child insists that all children are entitled to play an active part in the realisation of their rights according to their evolving capacities. How then can this entitlement be achieved?

There are three sets of questions to be addressed:

- 1 What environments are needed for children to be able to promote and nurture their evolving capacities, and what factors inhibit the development of potential? In exploring this question, it is essential that full account is taken of the extent to which children themselves exercise agency in this process and that the impact of the environments that children experience will be mediated and influenced by the cultural context in which they are living. The answers to these questions will be inextricably linked to the goals that any given society has for its children.
- 2 How can children be assured the opportunity and support to take responsibility to exercise those rights for which they have the competence? What assumptions can we make about children's capacities at a given age, in order to encourage children's participation and create environments in which their capacities are respected.

- 3 What levels of protection do children need consistent with their levels of development or their 'unevolved' or 'still evolving' capacities? How can a balance be constructed between the right to participate in decision-making and the right to protection from activities likely to cause them harm? What capacities do children themselves have to contribute towards their own protection?

The evolving capacities of the child need to be understood and examined through three conceptual frameworks:

- Firstly, as a **developmental** concept, recognising the extent to which children's development, competence and emerging personal autonomy are promoted through the realisation of the Convention rights. In this sense it imposes obligations on States parties to **fulfil** these rights.
- Secondly, as a **participatory or emancipatory** concept, denoting children's right to respect for their capacities and for the shifting of responsibility for the exercise of rights from adults to children in accordance with their levels of competence. It imposes obligations on States parties to **respect** these rights.
- Thirdly, as a **protective** concept, which acknowledges that because, throughout childhood, children's capacities are still evolving, they have rights to protection on the part of both parents and the State from exposure to activities likely to cause them harm. It imposes obligations on States parties to **protect** these rights.

The inter-relationship between these three strands is

complex. Indeed, it has been argued that the differentiation between children as dependents requiring protection and as independent individuals seeking autonomy is ‘perhaps the most difficult and controversial issue in children’s rights’.⁵⁷ In the context of internationally-defined rights, the difficulties are compounded by the need to take account of the very diverse views and experiences of childhood, of development, of what constitutes autonomy and how capacities evolve. These issues will be explored in the course of this discussion paper.

3.1 A developmental concept: Fulfilling children’s rights to the development of their optimum capacities

The concept of the evolving capacities of the child is implicit in the overall theme of the development of the child, which runs through the text of the Convention. While it is clear that people develop throughout their lives – learning and growth do not cease at the age of 18 years – childhood offers a unique period of both opportunity and vulnerability and is, accordingly, offered special protection. The aim of development is to promote and enhance not only the well-being, but also the capacities of children, and States have clear obligations to take appropriate measures to achieve that goal for all children. Indeed, the Convention can be seen as a tool for promoting children’s development, competence and emerging personal autonomy.⁵⁸

Article 6 is the platform for other developmental principles throughout the Convention.⁵⁹ It asserts that States parties shall ‘ensure to the maximum extent possible the survival and development of the child’. In imposing these obligations, it extends the mandate to the development of children’s cognitive, social, emotional, physical and moral development. This breadth is affirmed in Article 27, which explicitly recognises the importance of an adequate standard of living for children’s ‘physical, mental, spiritual, moral and social development’. And Articles 28 and 29 spell out the role of education in developing the ‘child’s personality, talents and mental and physical abilities to their fullest potential’. The right to play, embodied in Article 31, recognises its importance in children’s development. The Convention also extends the concept of development to State’s obligations to children with disabilities: Article 23 stresses the right to opportunities conducive to the child ‘achieving the fullest possible social integration and individual development including his or her cultural and spiritual development’.

It is widely acknowledged that providing children with adequate nutrition, intellectual stimulation, opportunities for play, a healthy environment, adequate rest, social interaction and emotional care and security are prerequisites for healthy development and realisation of the child’s potential capacities;

conversely, their deprivation will impede the child’s growth and development.⁶⁰ Recognition of the social, cultural and historical contexts that impact on and inform children’s development does not mean that there are no criteria for development beyond distinct cultural value systems.⁶¹ However, beyond a level of minimum adequacy, it is difficult to prescribe how those aspects of children’s well-being should be met across culturally diverse societies. The way in which children’s needs are perceived, and the goal for their fulfilment will vary in different cultures even though their existence and the right of children to satisfy them are universal.⁶²

3.1.1 Promoting capacity through social learning

Research in child development in recent years has highlighted the extent to which children are not merely passive recipients of environmental stimulation, but rather, actively engage with their surroundings in purposeful ways even from babyhood.⁶³ Children play a key role in influencing their own development. Vygotsky, one of the most influential thinkers in this field, argued that there is a gap between what children (or indeed adults) can achieve with and without assistance.⁶⁴ This is defined as the ‘zone of proximal development’ that is ‘the distance between the actual development level as determined by individual problem solving and the level of potential development through problem solving under adult guidance or in collaboration with more capable peers’.⁶⁵ It is in this zone that cognitive development takes place. Through a process known as scaffolding, where an adult adjusts his or her help in response to the level of the child’s performance, children can perform tasks they are incapable of completing on their own. In other words, children’s capacities are developed most effectively through interaction: The process of learning generates development and children grow in competence through participation.

Recent social and ecological theories emphasise that rather than development taking place in orderly, predictable stages, children come to know and understand the world through their own activities in communication with others.⁶⁶ The key implication of this approach is that, rather than leaving children to explore at their own pace and at their own level, the most effective model for developing competencies is one in which children work collaboratively, either with adults or other children, each serving as a resource for others, and taking varying roles and responsibilities according to personal understanding and expertise.⁶⁷ This reality is instinctively recognised by mothers and fathers all over the world who interact with and respond to their young children.

Despite widespread acceptance within the child development field of this analysis of how children learn, it is far from universally accepted or applied in practice. Many child-care and education systems remain rooted in presumptions of age-related development. Most children continue to be taught in

schools by teachers who view the process of learning as a transfer of knowledge and expertise from teacher to child. Certainly, in many Western cultures, children's performance is rigorously measured at specific ages, when they are expected to have attained clear age-related targets, through learning both at home and in school.

3.1.2 The role of participation in promoting competence

The importance of children's participation in decisions and actions that affect them is acknowledged not only in Article 12 of the Convention, but throughout the entire document. Participation is a substantive right: Children are entitled as a matter of principle to be listened to and taken seriously. It is also a procedural right through which children can act to protect and promote the realisation of other rights. Article 12 has been the trigger for significantly enhanced awareness of the importance of children's participation over the past decade. Initiatives established to listen to children have developed in countries throughout the world, and at every level from governments down to local community projects.⁶⁸

However, the focus of children's participation remains at the level of consultation, with relatively few opportunities for children to become actively involved in the process of influencing decisions, policies and services that impact on their lives. It remains at the level of being 'systems maintaining' rather than 'systems transforming'. And it is the latter that provides a transfer of significant decision-making to children with real opportunities for personal and social development.⁶⁹ Furthermore, too little emphasis has been placed on creating opportunities for very young children to demonstrate their capacities to participate in decision-making processes.

Giving children choices

Staff in a nursery decided that the children, aged four, could decide for themselves when they wanted fruit and water rather than having to wait for the adults to offer it. At first the children asked permission, until they got used to the idea that they could help themselves. Some spilt water, but then helped to mop up the spills and learned to pour it more carefully as they became used to doing so. In being allowed to exercise choices for themselves, the children became more responsible and the staff were freed up to do other things.⁷⁰

Central to Vygotsky's analysis is a conception of development as a process arising out of children's participation in the social and intellectual life surrounding them.⁷¹ Effective participation is not a given. Like adults, children build competence and confidence through direct experience: Participation leads to greater levels of competence, which in turn enhances the quality of participation.⁷² It is the involvement in shared activities with both adults and peers where there is a presumption of ability to

complete a task successfully that encourages children's development. Such skills are neither innate nor an inevitable consequence of social maturation. They develop in accordance with experience, with adults' assumptions of competence and the levels of responsibility afforded to the child.

Participation is not only a means by which children can effect change but also provides an opportunity for developing a sense of autonomy, independence, heightened social competence and resilience.⁷³ Chawla and Heft argue that the development of competence is the capacity to exercise control over valued spheres of life, and that this experience is a universal characteristic of psychological well-being, although its expression is formed differently in different contexts.⁷⁴ This process is conceptualised in Barker's six 'zones of penetration' – levels of children's participation in different settings:⁷⁵

- Onlooker – no active role.
- Audience – a recognisable place but no power.
- Members – potential rather than immediate power.
- Active functionary – power over part of the setting.
- Joint leader – shared immediate authority over the setting – for example, representative of a school council.
- Single leader – immediate and sole authority.

In those zones in which children experience a low level of participation, they acquire less opportunity for the development of competence. The most effective preparation for a sense of self-efficacy is to achieve a goal for oneself and not merely to observe someone else achieving that goal. For example, educational research has found that in small schools, the opportunities for taking on a responsible position were high when compared with larger schools; accordingly, far more children in the small schools had opportunities to exercise responsibility and develop competence.⁷⁶ It is important to recognise that these processes are not unique to children. The development of competence takes place throughout life.

Too often, adults do not play a facilitating role in helping children make their own decisions, or extending children's competencies. Recent research evidence from the UK indicates that, although children recognise the value of adult experience and the fact that they could benefit from it, they are often deterred from seeking help because of a lack of respect from adults when they do so. Adults too often impose their solutions rather than helping children come to their own conclusions.⁷⁷ For the most part, schools deny, rather than facilitate, opportunities for collaborative participation and the exercise of responsibility.⁷⁸ The extended dependency experienced by so many children in Western societies can postpone social, political, or economic participation. And in the hierarchical family, social and political structures that characterise so many societies throughout the world impede not only recognition of children's potential for participation, but also its realisation.

3.1.3 Creating opportunities for children's capacities to evolve

■ In families

Children's need for a caring and secure family life is identified in the Preamble to the Convention, which states that children 'should grow up in a family environment in an atmosphere of happiness, love and understanding'. It is reiterated in a number of other articles that emphasise the role of the family as the fundamental group in society capable and responsible for meeting the needs of children. The importance of stability in social relations and the need to be loved and valued are universally accepted for children in all cultures. Growing evidence suggests a direct relationship between development outcomes and the quality of care, characterised by consistency, skill, responsiveness and physical capacity.⁷⁹

That children share common needs is widely assumed by policy makers and practitioners in child welfare agencies across Western societies. Kellmer Pringle argued that all children have four basic needs: for love and security, for new experiences, for praise and recognition, and for responsibility.⁸⁰ Implicit in these constructions of need is the assumption that failure to fulfil them will impair the evolving capacities and optimum development of children. Woodhead has questioned whether it is possible to be so prescriptive about the nature of needs, arguing that although they are presented as authoritative statements of fact, they actually conceal personal and cultural values alongside empirical claims about childhood.⁸¹ Perhaps the critical distinction between these two perspectives is not in the acknowledgement of the needs themselves, but rather, in the assumptions about how needs are fulfilled. Woodhead seeks to differentiate between four different categories of need:

- **Needs that are a description of children's psychological nature**, for example, children seeking out enduring human relationships and behaviours that appear to apply irrespective of cultural setting.⁸²
- **Needs as an inference about the potential harmful consequences of particular childhood experiences**, such as inadequate mothering in early childhood, lack of which, it is argued, will adversely affect mental health. Much research has been devoted to exploring the validity of this claim, and appears to affirm the importance of early relationships.⁸³ The difficulty here is that these inferences fail to acknowledge the cultural context in which care is provided and the definitions of mental health presumed in the research. Other research has found that cultural attitudes play a significant role in mediating the impacts of childhood experiences. For example, the impact on children of divorce appears to be strongly influenced by the levels of social stigma associated with marital breakdown and the expectations of professionals that children would be adversely affected.⁸⁴ It is overly simplistic to assume that pathological outcomes can be universally associated with specific childhood experiences, irrespective of the context in which they arise.
- **Needs for particular cultural forms of childhood**

experience, such as the need for children to become attached to one mother figure in early childhood. This presumption has had significant impact on social policy across Western societies as being vital to children's social adjustment.⁸⁵ Yet there is ample evidence that other cultural patterns of childrearing involving multiple care-taking can produce equally well-adapted children.⁸⁶ In other words, presumptions that children are pre-disposed to become attached to one major figure and fulfilment of that 'need' is a prerequisite to mental health cannot be justified. Similarly, as argued earlier, where the goals of childhood vary, so too, necessarily, will the perceived needs of children.

- **Needs for specific childhood experiences**, such as particular forms of imaginative play and opportunities for communication through music. While provision of these opportunities might well be seen as desirable within particular cultural contexts, it is difficult to argue that they can be viewed as an intrinsic part of children's psychological make-up, mental health or social adjustment.

Nevertheless, a presumed universality in respect of the needs of children and how they should be fulfilled has gained powerful currency in the West and informs, both implicitly and explicitly, thinking about children's psychological development and the environments necessary for their differing capacities to evolve. Western styles of childcare have been incorporated into what has been coined 'developmentally appropriate practice' (DAP) by the National Association for the Education of Young Children, the lead agency for the early years profession in the US. DAP draws heavily on stage theories of child development and identifies the kinds of practices adults should adopt to enable children to pass through those stages successfully. In this model, adults bringing up children are seen to have a unique, profound and formative influence in a child's early years. It argues that, while children's development is the same everywhere, it can be advanced by adult interventions such as parent education programmes, and impeded by poor parenting. And children themselves are not recognised as having agency in that process.

However, Penn argues that although promoted as drawing on the universal needs of children, DAP relies on culturally specific assumptions including the paramount importance of individualism and selfhood, childcare in a context of permanent nuclear households, the need to encourage choice from a wide variety of material goods and certain balances between nature and nurture.⁸⁷ This idealisation of the stable two-parent nuclear family fails to recognise the multiplicity of ways in which care can be provided. Furthermore, despite evidence from a cross cultural study in twelve societies concluding that the care-giving style dominant in the US – in which mothers adopted a playful, sociable and equitable relationship with their children – was exceptional, it is this style of interaction that has become the child development orthodoxy on normal and healthy ways for parents to relate to their children.⁸⁸ Accordingly, while DAP may

well be a relevant and valuable approach within the US, it fails to accommodate other cultural practices. For example, across the Indian sub-continent, many observers have commented on the extensive nurture given to small children by extended family, suggesting that it is a primary reason for the apparently low levels of mental illness in spite of the insecurity of many adults' lives.⁸⁹

DAP is a model being increasingly exported through early childhood development programmes across the developing world by many international development agencies, including the World Bank.⁹⁰ Yet evidence of the effectiveness of such programmes is highly disputed. Scheper-Hughes, for example, argues that of all the factors that place young children at risk, the quality of parenting is by far the most difficult to examine with any real objectivity.⁹¹

In other words, although there are basic, universal prerequisites for children's health, care and learning, some caution needs to be exercised in presuming the validity of any universally defined approach to promoting children's development, and thereby to the realisation of their rights. Questions do arise as to whether it is appropriate to make invariant assumptions about the needs of children and how they can be fulfilled. Global solutions that define strategies for addressing need without also addressing the context in which those needs arise are not necessarily helpful.

The concept of 'contextually appropriate practice' has been proposed as an alternative to DAP.⁹² Strategies for creating appropriate environments in which children's capacities can evolve optimally must take cognisance of both the culture and context in which the child is living and the child's right to contribute towards understanding and definitions of their own needs. This does mean challenging traditional practices within families that clearly violate children's rights and impede their development – for example, discrimination against girls, physical punishment, lack of respect for children's views, and neglect of children with disabilities. It also means promoting positive practices that build on the strengths of local cultures, while reflecting the principles of the Convention on the Rights of the Child.

■ *Through play*

Play is vital to children's development, providing as it does the opportunity for enjoyment, exploration, refuge, and participation in cultural and social events. Indeed, there is a widespread view among child development experts that play is the very centre of children's spontaneous urge for development and should be understood as a core dimension of the quality of people's engagement with the world.⁹³ Children will create opportunities for play in the most inauspicious circumstances: in the course of a working day, in hospital, in refugee camps, during lessons. And through it, children acquire social skills, creativity and innovation, capacity to negotiate and to care for others, and the ability to develop, understand and abide by rules.

However, despite children's considerable facility for creating play opportunities, the environment in which many children live militates against its adequate realisation. In some cases, parents' own lack of experience of play limits their ability to create, or recognise the importance of play environments for their children. Many children with disabilities are denied any real chance for play as a result of discrimination, social exclusion and the physical barriers imposed by the environment.⁹⁴ The disproportionate burden of work that falls on girls in many parts of the world prohibits opportunities for play. Children in prisons, in childcare institutions, in long term hospital care or refugee camps often lack any facilities or space for play. Excessive formal demands on children's time, whether through paid employment or education, can intrude on the time available in children's lives for play. It is not taken seriously as requiring government support, yet government policies impact directly on the extent to which children experience adequate play opportunities. Education policy, enforceable employment protection policies, creation of safe spaces in the environment and appropriate training of relevant professionals all affect the realisation of the right to play and the consequent healthy development of children.

■ *Through education*

Education should provide children with opportunities to develop optimum levels of competence for social and economic participation in their society, as well as for self-fulfilment. However, a number of barriers inhibit the opportunity for children to benefit from education as a means of fulfilling their potential.

LACK OF ACCESS TO EDUCATION

The right to education remains, for too many children, an unrealisable goal. Currently 121 million children lack access to education.⁹⁵ Even the very minimal aspiration of achieving access to basic education for all children by 2015 is unlikely to be met.⁹⁶ And certain groups of children are disproportionately excluded from realising their right to education: Girls continue to have less access than boys to education in many parts of world. In South Asia, the adult literacy rate is 26 per cent lower for women; an average six-year-old girl can expect to spend about six years in school, three years less than the average boy.⁹⁷ Less well publicised is the fact that the vast majority of children with disabilities in most developing countries are denied an education.⁹⁸ Access to education is widely accepted as essential for the fulfilment of development potential. Illiteracy undermines efforts to improve health and nutrition, reduce child mortality rates, address causes of HIV/AIDS, provide opportunities for more productive livelihoods, and strengthen democracy and respect for human rights.⁹⁹

SOCIAL INEQUALITY

Recent research by the UNICEF Innocenti Research Centre casts interesting light on the impact of poverty and inequality on the realisation of children's educational potential.¹⁰⁰ The social and eco-

conomic circumstances of parents is an overwhelming indicator of educational achievement, such that, among all OECD countries, differences between children's achievements within a country are significantly wider than those between countries. Despite widely differing educational systems, it appears that factors relating to the circumstances of families rather than the schooling system determine educational outcomes. Better resources, access to quality pre-school environments and better schools, combined with better health, and higher parental and teacher expectations combine to provide a formidable advantage for children from more privileged backgrounds. And international comparisons of children at different ages through the education system indicate that schooling has little impact on the hierarchy of inequality in attainment. Furthermore, in one longitudinal study in the UK, it was found that among a cohort of 1,300 children tested over a period from the ages of 22 months up to 26 years, children from poor backgrounds with high developmental scores at 22 months fell to below the median by the time they were 10 years, whereas children from better-off backgrounds with poor developmental scores rose to above the median by 10 years of age. It also revealed that at 22 months, there was already a significant gap between the development of children in poorer and wealthier families.¹⁰¹ It is therefore apparent that the seeds of inequality are sown well before schooling even begins.

ABUSIVE ENVIRONMENTS

In some cases, schooling fails to provide an optimum learning environment. Many schools are oppressive, poorly managed, inadequately resourced or offer a curriculum that is irrelevant to children's lives.¹⁰² Evidence from children across the world paints a bleak picture as to the levels of violence perpetrated by some teachers. In countries as wide-ranging as Sudan, Philippines, United States, Ethiopia and Bangladesh, children have reported an experience of violence, threats and public humiliation by teachers. Pinching, hitting, beating, tying children up, forcing them to stand or bend in unnatural positions, sexual abuse, and even threats of exposure to wild animals have been perpetrated with impunity on children by adults with responsibility for their education.¹⁰³ Such experiences are not only a violation of children's right to protection from all forms of violence, but directly impede the right to fulfilment of their capacities. Children cannot learn effectively in abusive environments. Indeed, violence by teachers is one of the major contributory factors discouraging school attendance in some countries. In one study in Bangladesh, children cited lack of corporal punishment in disciplinary practice as the quality they most valued in teachers.¹⁰⁴

A NARROWLY DEFINED CURRICULUM

Schools tend to prioritise cognitive learning as the primary focus of their energies. The measures widely used to assess children's cognitive development are actually quite narrow and the curriculum and teaching methods in most schools initiate children into

An alternative model of schooling

Evidence of the effectiveness of a more democratic and socially relevant education for building children's capacities can be found in the New School programme in Colombia. This programme has introduced a flexible curriculum with mixed-age classrooms that allow children to learn individually and in groups, with the teacher able to function as a facilitator.¹⁰⁵

These schools have also developed structures that enable children to function as a co-ordinated democratic community. One school in the programme has made children's participation in managing the environment of the school and local community integral to the basic concept of the school as a community-based centre for democratic learning. For example, they have developed a forest conservation project in which the children are seeking to save the mountain slope by planting native species of trees. Part of the challenge of the project is for the children to educate local villagers about the problem of using wood for firewood and for sale. The children collect seeds from existing trees and bring them to the school to establish a nursery that will ultimately result in replanting all the slopes with native trees in close collaboration with the adults of the community. The strength of the programme lies in the wide range of competencies that children acquire, backed up the opportunity to learn through practice. Beyond the basic skills of literacy and numeracy, they gain an understanding of environmental science, development and sustainability, processes of democracy and decision-making, how to formulate and present arguments, and skills of negotiation. A key element of the educational process is that children learn to take responsibility for the project through the respect and support of committed adults. This educational experience is in sharp contrast to the enforced dependency associated with much full-time schooling, which denies children opportunities to acquire competencies associated with taking responsibility, engaging with the adult world and experiencing a sense of social worth.

very particular forms of cognition.¹⁰⁶ These approaches are so firmly and widely established that they are taken for granted as both normal and necessary. Yet there is increasing recognition that children possess a variety of different intelligences that affect their development in complex and interacting ways that cannot be expressed through a single measure of overall capacity. Gardner, for example, argues that the multiple intelligences of children are not fostered adequately in the West because they are not seen or valued.¹⁰⁷ He identifies a need to change the thinking about children, reviewing not just how they learn but also what they learn.

Assumptions about the centrality of cognitive development are not necessarily shared across cultures. This is illustrated by an experiment by Serpell who administered a multiple intelligence test, designed in the North, to a group of Zambian children identi-

fied by adults in the community as being intelligent. The children's scores failed to correspond to the adult ratings because the local criteria for intelligence included social skills and responsibility and therefore did not match the purely cognitive skills measured in the test.¹⁰⁸

Te Whariki: A New Zealand approach to an early years curriculum

In New Zealand, a new curriculum was developed for children aged 0 to 7 years that sought to be culturally, philosophically and developmentally meaningful.¹⁰⁹

It is based on four principles:

Whakanana – empowering children to learn and grow.

Kotahitanga – encouraging children to learn and grow holistically.

Whanau tangata – including the wider world of family and community as an integral part of children's learning.

Nga hononga – learning through responsive and reciprocal relationships with people, places and things. Utilizing these principles, Te Whariki takes a very different approach than either the conventional subject-based school curriculum or the typical developmental curriculum map of physical, intellectual, emotional or social skills.

While there is little disagreement over the fundamental importance of education for children's development, the method of its delivery, the role and nature of schools, recognition of the potentially educative nature of work, and the part played by both adults and children in the learning process require considerable further investigation and debate.

■ *Through work*

Education and learning are not synonymous with school, and the Convention, while stressing that education is the right of all children, does not state that learning must take place in school. Indeed, many of the competencies acquired by children derive from experiences outside of school. Yet the trend is to remove children from the world of work, separate them from the adult world and provide them with de-contextualised learning delivered almost exclusively through language rather than observation or practice. This trend continues despite growing evidence that children learn better about the world by operating in it rather than studying it.¹¹⁰

Children in developing countries are very often expected to participate in both domestic and paid work, and education is not viewed as an alternative to work. Rather, children are widely expected to accommodate work around any formal educational provision they receive. Yet, because child work is excluded from the construction of a 'normal' childhood in the eyes of many Western child development theorists, it is almost completely absent from that discourse. Woodhead provides a vivid illustration of this absence. In checking the indexes in eight child development text books published between 1987 and 1995, he found 157 references for family,

126 for play, and 108 for school. There was just one entry for work: a brief account of the effects of part-time work on adolescent school performance.¹¹¹

These textbooks reflected the experience of North American and European childhoods. However, even in those terms, the failure to address child work cannot be justified, as significant numbers of children in, for example the UK and US, are engaged in part-time work as well as family-based domestic work.¹¹² This lack of recognition or research into the impact of work on children's lives means that there is relatively little understanding about the extent to which it impedes or enhances children's development, how children themselves feel about work, appropriate balances between work and school, or where the boundaries lie between harmful and meaningful work.

3.1.4 The impact of material deprivation on development

It is broadly possible to define the boundaries outside which material environments will have harmful consequences, judged by any standards, in respect of physical, emotional, social and intellectual development. Without access to basic standards of physical care and provision – such as food, shelter, clothing, health care, and clean environments – children's development will suffer. Contemporary brain research shows that the environment affects children at a very early age, influencing the number of their brain cells as well as how they are wired, and confirming a view that the early years are a critical period for learning.¹¹⁴ Many forms of both physical and intellectual disabilities, as well as

Children's perceptions of the role of work in their lives¹¹³

The International Save the Children Alliance recently decided to seek the views of working children from a number of countries in order to develop its policy on child work. A central message emerging from the study was that work has different associations and therefore differing impact on children in different cultures. For example, children from Peru, Central America, Mexico and the Caribbean viewed work as an activity that dignifies an individual, whereas for children in India, it is associated with something bad or wrong. Among the issues raised by the children was the need to recognise the different impacts of work on children of different ages, the need to stress both the positive and negative reasons for working, and the importance of legislation that is sensitive to the reality of children's lives. In other words, they were rejecting an all-encompassing ban on children's work, arguing instead for an understanding of the meaning and impact of work in context and according to children's differing capacities. They felt that work should not just be considered in terms of physical harm or access to income but rather in terms of its impact on a wider range of children's rights.

mental illness, are linked with material factors such as poor diet, environmental pollution, and exposure to risk of accidents, and are compounded by inadequate access to health care. For example, iodine deficiency in pregnant women can lead to severe intellectual disabilities in children. Projections in the mid-1990s estimated that as many as 50 million young children deficient in iodine have reduced learning abilities.¹¹⁵ Poverty is the most formidable enemy of healthy child development. It limits the quality of the environmental conditions in which children grow up and, in turn, influences children's physical, intellectual and emotional growth.¹¹⁶ Indeed, recent studies indicate that economic conditions may be the single most significant factor determining children's physical and emotional development.¹¹⁷

It is thus clear that fulfilment of children's basic social and economic rights is essential if they are to realise their optimum developmental potential. Given the growing evidence that the earliest months and years of a child's life are the period of most rapid development, laying down the parameters for future levels of competence and ability, there is growing interest in the role of early childhood development programmes to mitigate social and economic disadvantage. For example, beyond its application as a tool for promoting the psychological well-being of children, DAP is promoted as a strategy for addressing 'stunted cognitive development and preparedness for primary education... Deficits in individuals caused by early malnutrition and inadequate care can affect labour productivity and economic development throughout society. Properly designed and implemented interventions in the early childhood years can have multi-dimensional benefits'.¹¹⁸

However, as argued above, many such programmes are largely based on assumptions derived from contemporary Western theories that export universality in both the goals of childhood development and the means of achieving them.¹¹⁹ These assumptions also shift the focus of attention away from structural towards individualistic explanations for children's poor development. Instead of food insecurity and impoverishment being recognised as the cause of malnutrition, emphasis is placed on the quality of parenting as a key determinant of children's successful development and parents are 'blamed' for the failure of their children to develop appropriately.¹²⁰ Yet evidence as to the effectiveness of early childhood development programmes is, to date, limited. The most significant findings are drawn from small scale and resource intensive schemes such as the Perry Pre-school projects in the US that demonstrate long term gains can be achieved.¹²¹ There is some limited research from Brazil, however, indicating that early development programmes have, in fact, served to exacerbate existing inequalities and that uptake of primary education has actually fallen where such programmes have been implemented.¹²²

3.1.5 Summary

Children carry within themselves the potential for their own development, but this can only be realised in environments where children's optimal capacities can thrive.¹²³ The Convention acknowledges this and constructs development as a continuing process of interaction between the individual child with their inherent characteristics and the immediate and wider environment leading to the evolving capacities and maturity of the child. This poses explicit obligations on the adult world. However, in its recognition of the participation of the child as an active agent in the process of their own development, the Convention introduces a challenge to conventional approaches to development goals. Not only do children have a key part to play in the realisation of their own evolving capacities, but opportunities to participate will, of themselves, enhance those capacities.

3.2 A participatory or emancipatory concept: Recognising and respecting children's capacities

Articles 5 and 12, and, indeed, the overall philosophy of the Convention, establishes children's role as active participants in decision-making processes that affect their lives. Active participation in home, school and community life is fundamental to a human rights-based approach. While children must not be expected to perform or take responsibility at levels beyond their capacity, whether this is in respect of learning to read, making decisions about their future, or crossing the road, they are entitled to take responsibility and participate in those decisions and activities over which they do have competence. This section seeks to explore both the current state of the evidence on age-related capacities and the need to review many widely-held assumptions about the limits of children's capacities.

3.2.1 The right of the child to exercise rights

The concept of evolving capacities in the Convention acknowledges that childhood is not a single, fixed universal experience and that, while all the rights embodied in the Convention apply to all children, the capacities and context of the individual child must influence both how they are applied and the degree of autonomy of the child in their exercise.¹²⁴ The principle of respecting the child as an active participant and subject of rights, and not just as a recipient of adult protection, is a theme reiterated throughout the Convention. In addition to Article 5, evolving capacities is explicitly referred to in Article 14 with respect to the right to freedom of thought, conscience and religion. Also of key significance is Article 12, which stresses the right of the child to express his or her views and have them

taken seriously 'in accordance with age and maturity'. Articles 13, 15 and 16, which embody the rights to freedom of expression, association and to privacy, emphasise the child's right to 'his or her fundamental dignity and individuality, with the right to be different and diverge in his or her assessment of reality'.¹²⁵ As has already been observed, none of these articles identify specific ages at which entitlement to exercise rights transfers to the child. Rather, they allow for recognition of the individual capacities of each child to be respected in relation to each of their rights. The wording of Article 5 creates the potential for such recognition. It firmly challenges the notion that competence to exercise rights, as opposed to having those rights protected by adults, only commences at the age of 18 years. There is an onus on parents and, correspondingly on the State, to enable children to take progressive responsibility for those decisions they are competent and willing to take.

Compliance with the spirit of Article 5 and the philosophy of respect for children as social agents that is embodied in the Convention on the Rights of the Child, indicates the need for a more rigorous analysis and recognition of, as well as respect for, children's capacities. Capacity or competence spans a wide range of qualities – moral, social, cognitive, physical, and emotional – that do not all develop according to a uniform pattern. Children, like adults, will not acquire a consistent and overall level of capacity across all fields. Rather, their expressions of competence will vary according to the nature of the tasks involved, their personal experiences, expectations placed on them, social context and individual abilities. However, with respect to the capacity of children of different ages to engage in moral reasoning, rational decision-making and the exercise of responsibility, and indeed, on the relevance of age itself, there is still considerable debate. On the one hand, there are efforts to propose a scientific and universal model of child development. On the other, current thinking among many developmental psychologists proposes that all areas of competence evolve according to a range of factors influenced by culture and context.

3.2.2 The search for age-related competencies

Although Piaget's ideas on discrete and defined stages of developmental growth have been, to a large extent, discredited, it is impossible to discount the concept of phases altogether. While there are wide variations between individual children, there is clear evidence of biologically based universality in children's physical development. Children's bones follow an entirely predictable path of development and muscular development follows a sequential process starting with the attainment of control from a child's head and gradually moving down to the feet.¹²⁶ It is widely accepted that some significant changes in physical strength, agility, and cognitive and social competencies take place during a child's second year, at around 6 to 7 years, and again at puberty.¹²⁷ Cognitive performance is dependent on

the emergence of specific meta-cognitive skills, which are simply not available to young children.¹²⁸ And studies of anthropological literature indicate clear similarities between societies with regard to understanding the human life cycle and the place of children within it, as well as the age thresholds of major transitions.¹²⁹

A considerable body of research has sought to identify pre-determined physiological or psychological factors linking age with the acquisition of competencies. It is important to acknowledge that this research is undertaken almost exclusively in North America and Europe and largely in laboratory conditions, removed from children's day-to-day lives.¹³⁰ Significantly, even within these parameters, there is wide-ranging variation in findings across the research. So what does this research reveal?

Neuro-psychological researchers argue that full development of the frontal lobes of the brain, which serve as centres for executive behaviour, critical thinking and judgement, probably does not occur until at least 18 years.¹³¹ Researchers have found that, during the teenage years, there is a loss of brain tissue in those areas controlling impulses, risk-taking and self-control. Accordingly, it is suggested that key parts of the brain responsible for inhibiting violent emotions and rash actions are 'vastly immature' during adolescence.¹³² Some research indicates that the intellectual competence of children up to the age of 11 or 12 to think about and plan the future, or deal in relative rather than abstract concepts, is far less sophisticated than that of adolescents between the ages of 12 and 18.¹³³ Other research notes that the capacity for moral reasoning is significantly more developed in older adolescents, and that a typical adolescent of 12 or 13 cannot appreciate that there is more than one solution to a problem or that individual acts or political solutions are not necessarily absolutely right or wrong.¹³⁴ This research points to the development of moral reasoning emerging at around 14 or 15 and leads some commentators to argue that it is the appropriate age for gaining the right to make personal decisions.¹³⁵ There is evidence suggesting that up to age 16, many adolescents find it difficult to imagine risks and consequences of decisions and recognise the vested interests of others.¹³⁶

Evidence from American research examining the competencies of children to stand trial presents some interesting findings concerning age, intelligence levels and mental illness having a significant impact on thresholds of competence. In one study of 136 children, ages 9 to 16, who were referred for pre-trial competency evaluation, the evaluators found that 72 per cent of 16-year-olds, 84 per cent of 15-year-olds, 63 per cent of 13- and 14-year-olds and only 25 per cent of 11- and 12-year-olds were deemed to be competent on the basis of criteria related to understanding the charges brought against them.¹³⁷ Many children in the study were unable to describe the charges brought against them, the concept of plea-bargaining, the nature of

confidentiality, the advocacy role of the attorney, or the concept of legal rights.¹³⁸ On the basis of these findings, it was argued that there should be a legal presumption of incompetence to stand trial for children younger than 14 years.¹³⁹

However, a research study by Bartholomew, established to ascertain whether these patterns indicate that under-18s are consistently less competent at making decisions than over-18s, undermines much of the validity of these claims.¹⁴⁰ The study comprised a series of vignettes of treatment dilemmas, asking participants to choose between five alternative treatments. They were applied to four age groups: 12, 15, 18 and 21 years. Findings suggest that the differences between adults and young people, for example, concerning preparedness to be influenced by short term goals, and changeability in views, do not appear to impact decision-making competence. Bartholomew argues that it is invalid to extrapolate age-related assumptions about levels of decision-making competence.

His research also indicates that confidence in one's own ability to make choices is a significant and independent predictor of competence. Indeed, it is claimed by some researchers that confidence is a vital pre-requisite to feelings of self-determination and that many prevailing legal frameworks limit opportunities for children to practice decision-making and thus decrease children's confidence in their decision-making abilities.¹⁴¹ In practice, the more opportunities for decision-making that children are given, the better they are able to exercise informed choices.¹⁴² Conversely, limiting the autonomy of children promotes a self-fulfilling cycle of learned helplessness where they know they are not free to decide major issues or their decisions are not binding or their dissent can be easily over-ruled. This leads to a reluctance to make decisions and a tendency to react against adults simply out of frustration. These behaviours are then used to affirm the view that adolescents are inconsistent, irrational and emotional.¹⁴³

Other overviews of relevant research suggest that from 14 years, children's capacity to make informed decisions is as well developed as for adults with respect to understanding the facts, the decision-making processes and reasonable outcomes of choice.¹⁴⁴ And 9-year-olds are considered as competent as the average adult in demonstrating choice based on reasonableness. Significantly, this research highlights developmental and contextual factors that impact on children's expressed wishes and abilities to assess what is in their best interests. For example, younger children tended to defer to those in power and base decisions on the perceived consequences of challenging adult authority.

Hart argues that current thinking in developmental psychology indicates the following assessments of children's evolving capacities:¹⁴⁵

- Children up to three years are not able to really understand the perspective of others, and lack

any significant decision-making capacity.

- From age 3 to 11, children are increasingly able to recognise that people have different perspectives, and gradually during that period they acquire the ability to see another's point of view.
- By age 11, children begin to be able to understand a third-person perspective and appreciate that people may have mixed feelings about something.
- Adolescents are able to reflect on what is good for society and develop a legal or moral perspective.

3.2.3 Limitations of age-based assessments of competencies

■ *The impact of context on competency*

A growing body of recent research suggests the need for extreme caution in drawing conclusions on age-related competencies, arguing instead that a wide range of other factors influence how children function. Bronfenbrenner, for example, has urged the need to look at the environment or setting in which a child develops, as well as the child him or herself, and has criticised research that studies children only briefly in strange situations and with unfamiliar people.¹⁴⁶ Indeed, the very diverse findings are themselves evidence of the impossibility of defining rigid or prescriptive ages at which competence emerges. To date, developmental psychology has failed to provide scientifically valid yardsticks against which children's evolving capacities can be evaluated, nor is it likely to do so in the future.¹⁴⁷ Furthermore, the perception of competence as a static rather than dynamic concept fails to reflect children's potential capacities.

Children, as well as adults, will demonstrate differing levels of competence in different contexts. Children who have difficulty with a particular task in a laboratory may be able to tackle it successfully in their everyday lives. For example, toddlers demonstrate difficulties in laboratory memory tests but demonstrate impressive memory for the location of hidden objects in their own homes.¹⁴⁸ And, it is not simply location that determines how well children can perform. Their communication skills vary according to whether they are talking to a peer or a teacher, or whether they are at home or at school. Children's interactions with peers are more negative when their mother or a teacher is present. The perceived differential between the power and status of the adult and child impacts significantly on how children respond.

Gender influences levels of competency. For example, analysis of sex differences in behaviour reveals worldwide trends in which girls aged 7 to 11 years are more nurturing than boys, girls of 3 to 7 are more responsible than boys and boys generally are more aggressive than girls.¹⁴⁹ However, these differences are likely to be related to the tasks assigned to girls and boys, and the differing expectations placed on them and opportunities they experience. When boys are assigned tasks deemed culturally appropriate for girls, they too become less aggressive and more nur-

turing and these behaviours extend to their interactions with other individuals.¹⁵⁰ The relevance of tasks children are asked to perform also impacts on how successfully they complete them. Children's place within the family, – whether they have older or younger siblings – is likely to impact on capacity and levels of assumed responsibility. And, as described earlier, the level of support and encouragement has a significant impact on competence. No situation is context-free. It is therefore not possible to discover a child's capacities in any absolute sense.¹⁵¹

Mathematics in the street and in school¹⁵²

A group of children in Brazil between 9- and 15-years-old took part in a research project to assess their competence in mathematics. All of these children were from poor backgrounds and were involved in helping their parents as street traders, which involved dealing with financial transactions. Most were currently in school, although one had dropped out. The children were asked to participate in two tests, one informal and one formal. The informal test was carried out in the children's own environment, on a street corner or at the market, posing questions related to actual purchases being made, such as the cost of several items they were selling. In the second, formal test, the children were asked to write down answers to specific mathematical questions. Although the questions were based on the same problems solved in the informal test, they were presented out of context and using imaginary situations. The findings reveal that children demonstrated significantly more success in solving problems within a familiar context. Of the 63 problems posed in the informal test, the children solved over 98 per cent correctly. However, they achieved only 37 per cent correct answers for questions out of context.

Children's personal experiences also influence their capacity to understand and make informed choices. For example, Alderson's work on children's capacity to consent to surgery reveals that children as young as 8-years-old who have experienced extensive levels of medical treatment can acquire the ability not only to understand their condition and propose treatments, but also to make wise decisions, often involving life or death implications.¹⁵³ Children's levels of understanding were developed according to their individual experience, coupled with the levels of expectation and support available to them. Extremely young children who had experienced high levels of medical intervention often had the capacity to make painful and difficult decisions. Of the 120 children in Alderson's study, very few wanted their parents to be the main 'decider' about proposed treatment. Rather, they wanted their parents involved as mediators, supporters, interpreters and decision-sharers.

■ *The impact of methodology on assessments of competence*

The evidence as to children's level of competence often relies on methodologies that serve to inhibit rather than respect their level of understanding.¹⁵⁴

One of the major criticisms of Piaget's work is that his studies did not make sense to the children involved and led to a consequent underestimation of their abilities.¹⁵⁵ For example, he concluded that young children were incapable of envisaging situations from a point of view other than their own. However, more recent research, which involved interviewing 800 children ages 7- to 11-years old, demonstrates that 9-year-olds are able to consider alternative social and political arrangements and to justify them in terms of principle.¹⁵⁶

The impact of methodology is exemplified in a study undertaken in the US to determine the competence of 192 children, ages 4- to 7-years-old, who had allegedly been mistreated, to act as child witnesses. The study found that many prosecutors fail to ask questions that children can understand and accordingly, many cases get dropped because they cannot demonstrate that children are capable of understanding the importance of telling the truth. The usual approach is to ask children if they know what would happen to them if they tell a lie in court. But children are unwilling to identify themselves as liars, even hypothetically. They insist, instead, that they are not going to lie. The research found that, among the children who exhibited an understanding of the difference between the truth and a lie, 69 per cent failed to explain the difference adequately using conventional approaches adopted by the courts. Lyon and Sawitz have developed a child-friendly test that asks children to identify when story characters are telling the truth and the consequences of the character's actions.¹⁵⁷ The child-friendly test demonstrates that children in the same age group are able to understand the concept of truth and the consequences of telling a lie.

Understanding from a child's perspective

One important scientific study was conducted with young children and a 'naughty teddy'. The study disproved assumptions that young children's thinking is inconsistent and confused, based on tests devised by Piaget and replicated around the world in which children tended to vary their answers when asked the same question several times. In fact, the children assumed the researchers wanted a different answer each time they asked the question and so they varied their response in order to be helpful. This led the researchers to conclude that the children were unable to think consistently. When, instead, the questions were asked by a 'teddy', the children laughed at his repetitions and firmly repeated their original answers. They were not intimidated by the 'naughty teddy' and did not feel the need to be polite or to pretend not to notice that he kept asking the same questions.¹⁵⁸

■ *Findings from cross-cultural comparisons*

Much of the research relating specific ages to the attainment of competencies has been undertaken in Europe and North America, and accordingly reflects the realities of children in that socio-economic and cultural environment. When cross-cultural compar-

isons are considered, it becomes apparent that children's levels of functioning are far from universal and that where different assumptions of competence apply, different behaviours and practices arise. Children cannot be conceptualised as a homogenous group: Gender, class, culture, disability and ethnicity, as well as age, all influence children's lives and, accordingly, their capacities. To date, the focus in developmental psychology on universal patterns of development have failed to take account of these differences.¹⁵⁹

Social and cultural expectations inform the demands made on particular groups of children and their consequent capacities to exercise responsibility. In Nepal, for example, girls take on the adult work roles at 12 years, while boys do not do so until 14. Indian girls are seen to reach adulthood at 14 and boys at 16 years. Attitudes towards girls inform their development. Subservient roles, constraints on personal autonomy, sexual exploitation, lower wages, domestic work and lower status within the family all affect girls' self-perception and realisation of their capacities and abilities. In societies where disability is viewed as a punishment or a curse, children with disabilities grow up with a profound sense of their own incapacity. They are consistently defined by what they are not and what they cannot do, and denied the emotional and educational investment to allow their capacities to develop.¹⁶⁰

Rogoff, in comparing early childhoods in Guatemala, India, Turkey and the US, found that although the process of parental guidance for children's participation in everyday activities is universal, there are important cultural variations.¹⁶¹ In communities where children are excluded from adult activities, adults take more responsibility for managing children's activities and their motivation. However, in societies where children are integrated into adult settings, children show intrinsic motivation to identify with adult activity and learn through observation and modelling of adult skills.

In Bangladesh, across all classes of society, children are seen to cross a threshold that separates a stage of innocence and ignorance, known as *shishu*, from a later stage of knowledge, understanding and responsible behaviour, but this transition is not associated with specific ages. Poor uneducated mothers understand their children's development 'as an organic process, regulated by nature and God' in which children will acquire skills irrespective of parental input.¹⁶² Middle class Bangladeshi mothers adopt a different approach, believing that quality food, diligent care and rigorous coaching will lead their children to become clever and succeed. What both sets of Bangladeshi parents have in common – and where they differ from most Western parents – is that they do not relate developmental stages to the age of children.¹⁶³ For example, girls are seen to reach a 'state of understanding' earlier than boys. Blanchet describes how girls from the ages of 4 to 5 years knew to wait without complaining when they were hungry, whereas boys would cry until food

appeared. Parents explain this as the inability of the boys to understand.¹⁶⁴ Poor girls employed as maid-servants from the ages of 9 to 10 years will be expected to demonstrate a higher level of capacity than that displayed by their employers' daughters. Daughters of prostitutes are expected to achieve a state of understanding far earlier than their peers living in rural areas. In other words, the criteria relating to the development and capacities of children are defined by gender, class, experience and occupation, rather than age.

The African Charter on Children's Rights and Welfare explicitly includes reference to the responsibilities of all children, subject to age and ability, to assist their family and serve their community. In other words, children are expected to be active participants: They are not viewed merely as recipients of

Children's views of how childhood is understood¹⁶⁵

A consultation undertaken by UNICEF in Bangladesh highlights the extent to which age, per se, has little bearing on children's perceptions of the status of childhood in their country and when and how childhood ends.

"*Shishu* is someone below 4-years-old." (male, 10-years-old)

"*Shishu* is someone below 12-years-old." (male, 13-years-old)

"Someone below 18 is a *Shishu*." (male, 13-years-old)

"A girl is not a child anymore when she gets married; she becomes a woman." (female, 15-years-old)

"A child is a child. Children and adults have a lot of differences. Adults have their own brain and they have many ideas, but children are different. The adults have the intelligence to make decisions alone; children do not have their own intelligence." (male, 16-years-old)

"A child is below 18 according to the Convention on the Rights of the Child. But if I go around saying I am a child they will laugh at me and my friends will avoid me." (male, 13-years-old)

"When a child becomes tall, that is when he becomes an adult. The size makes the difference." (female, 8-years-old)

"My father explained to me that children are not *Manush*¹⁶⁶ until they become successful adults. Because of this, children cannot be treated like *Manush* until the adult age. But in times of death, a child also becomes *Manush*. We say, 'A *Manush* has died', not 'A child has died.'" (female, 15-years-old)

"Children are not *Manush*. They will become human beings when they will be big and successful. Adults have the duty to bring us up as human beings." (male, 13-years-old)

"Only adults are human beings. *Manush* have responsibilities and brains. Children do not have responsibilities but only wishes." (female, 17-years-old)

adult care and protection, but as members of a community in which they have obligations and the potential for contribution.¹⁶⁷

Entry into some form of work between the ages of 6 to 12 years is seen to play a major part in children's development in many developing countries. They are not only considered to have the physical and mental capacity for work, but are also able to benefit from the experience.¹⁶⁸ In many countries, children's emerging skills are directly linked to increasing responsibilities – for example, increased mobility leads to an expectation to undertake errands such as fetching and carrying, and increased dexterity is accompanied by expectations of participation in domestic chores.¹⁶⁹

3.2.4 Failure of adults to recognise and respect children's capacities

There is a widespread tendency to assume that adults are competent and, conversely, that children are lacking in competence. This overall assumption frequently blinds adults to the realities of what children are capable of understanding or achieving.

At the level of personal decision-making, children often display a greater degree of confidence in their abilities to accept responsibility and agency than adults. Research undertaken by Mayall with 9- and

High levels of responsibility are within the capacities of young children

At the age of 10 years, Tonga children of both sexes in Zimbabwe participate in the household's agricultural enterprise as farmers, livestock owners and cash earners, often owning and controlling both land and livestock. At this age, boys would be expected to build their own houses, while girls would be considered capable of running a household in the absence of a more senior woman.¹⁷⁰ Children in Peru's asparagus farms are generally regarded as having almost adult competence by the ages of 11 to 14 years, often taking sole responsibility for the cultivation and management of a field.¹⁷¹ In rural Bolivia, young people from the ages of 13 to 16 years, are negotiating decisions about future work or education and, despite major structural constraints limiting their choices, are nevertheless exercising clear agency in deciding whether to stay in school or to start work, whether to work within the local community or migrate to seek better financial possibilities, or whether to opt for a rural or urban lifestyle. Furthermore, they exhibit a strong sense of family responsibility and their choices are heavily influenced by the importance of balancing their own wishes with the needs of the family. The research highlights that young people of this age not only demonstrate the capacity to make informed choices based on realistic assessments of the options available to them, but that in doing so, they are aware of and able to take account of perspectives other than their own.¹⁷²

12-year-olds reveals that the children were very critical not only of the failure of adults to acknowledge the responsibilities undertaken by children, but also of adult suspicion of children's moral agency. They gave examples of teachers who, on one hand demanded a high level of responsible behaviour and commitment to work, while conveying strong messages of children's lack of moral agency. The

Bangladeshi children want more respect for their capacities¹⁷³

In a major consultative process conducted by UNICEF to seek out children's views of respect for their rights in Bangladesh, both girls and boys from all socio-economic and cultural backgrounds report neither being encouraged to express their views nor invited to take part in decision-making processes concerning matters affecting their lives in home, school, work place, court, institutions, etc... Children reported that adults do not perceive them as capable of making important decisions and/or contributing to decision-making and they expressed a desire to be considered as active members of the family, the community and society rather than be viewed as someone's 'property'. Furthermore, adolescents, especially girls, expressed the need and desire to be given a voice and to become involved in decision-making. Prevailing customary practices leave little scope in the family, the community and society for adolescents' involvement in decisions about such vital issues as education, work and marriage.

Young people demonstrating competence as researchers¹⁷⁴

A project on sexual exploitation in Eastern Europe gave 60 young people under the age of 18 from six countries the opportunity to participate as researchers. They were responsible for:

- a) Gathering baseline data on the awareness and extent of sexual abuse and the available services, and
 - b) Developing training and advocacy materials and strategies for challenging sexual abuse of children.
- These young people were directly involved in developing the survey material, determining the methodology to be used at a local level, conducting the research, analysing the data and producing recommendations for future action. More than 5,700 survey responses were returned, producing a wealth of information from which to build strategies for addressing sexual exploitation. Interestingly, there was initial resistance from some of the partner organisations who felt that young people lacked the competence and expertise to take responsibility for research in such a sensitive and complex field. It was suggested that, in order to test their concerns, a pilot should be held using first the adult professional researcher and then the young people themselves. The outcome was that the young people elicited more comprehensive responses, in large part because the children in the survey felt more at ease with their own generation when responding on issues of sexual exploitation and abuse.¹⁷⁵

children felt they were often not believed, and were viewed as morally inferior to the teachers.¹⁷⁶ Mayall also found that children perceive a clear distinction between levels of respect afforded to their capacities at home and in school.¹⁷⁷ At home, although their lives are structured by adult authority, children experience greater independence and opportunities to pursue their own agendas. Consent – to do and be done to – is negotiable. This contrasts powerfully with their experience at school, where adult authority is more rigorously imposed, leaving children with little scope for negotiation. Children reported that the competence and self-reliance they acquired at home is not valued once they start school.

Children's perceptions of their status

In research undertaken by Bissell in Bangladesh, children define themselves as big or small, terms that relate not to their physical stature or position of wealth within the community but to their relative autonomy.¹⁷⁸ For example, one 11-year-old girl perceives herself as 'small' because she does not make any decisions and she defines herself as not doing any work. When challenged that in fact she did work in a garment factory, she responded that because she handed over all her earnings to her parents, her work did not entitle her to see herself as 'big'. Another girl defined herself as 'medium' as she was taking care of the household. Her mother was away and this caused her father to treat her differently. "He asks me about things to be brought from the shops, I make decisions about what food we will eat, what things he should get and what has to be done." However, when her mother comes back, she is 'small' again. And in school, she perceives herself as 'small' because, in her words, "I don't know anything." It was found that the status of children and the levels of respect with which they are treated by adults around them bear little relationship to their age or indeed, their actual capacities, but rather to adult assumptions and the opportunities available for them to contribute.

This lack of recognition of children's competency is also evident in the way decisions are made in courts. Research in the UK indicates that where the courts are required to take account of children's views in accordance with age and maturity, the assumption that competence correlates with age is widely used to justify restrictions on children. Judges, for example, were particularly likely to think it unimportant to ascertain children's views, arguing that it would place pressure on them or that children don't know what they want.¹⁷⁹ Other research indicates that although there is an increasing willingness to listen to children, respect for children's opinions only extends to situations where the children's views concur with those of professionals. Where children have a different view, it is assumed that a difficult parent is manipulating them.¹⁸⁰

In Western countries, the widespread practice of excluding children from the responsibilities of the

adult world serves to delay and/or limit children's acquisition of competence. As the number of years children spend in school has extended, they have been increasingly excluded from participation in activities that confer status and social standing.¹⁸¹ Because children are perceived as physically, emotionally, socially and economically dependent, their potential social and economic contribution is rendered invisible. In fact, there is considerable evidence of children engaging in reciprocal relationships within the family, as well as making economic contributions through part-time work.¹⁸² What is missing is the overt recognition of their role. Solberg's research highlights interesting evidence of the extent to which children's contributions, and therefore their value to the family, go unseen. Parents commented that, as children grow up, they create less work for the parents. The implication was that certain household tasks had somehow 'disappeared'. In fact, the work was still being done, but because children had taken on the responsibility, it was not recognised.¹⁸³

A consistent message emerges from a series of case studies commissioned by UNICEF in South Asia documenting children's participation in projects and programmes within their local communities.¹⁸⁴ The involvement of children is met with initial resistance by parents who fear that children will be distracted from their school work and domestic responsibilities, or will lose respect for their parents or that they lack the competence. However, once children begin to participate, these fears invariably diminish and are replaced with a growing pride in their children's achievements. Families learn that children are more competent than was realized. Interestingly, the Government of Bangladesh, in its second periodic report to the Committee on the Rights of the Child, comments that parents lack the ability to make informed judgements about their children's capacities at different ages and that there is a general tendency to underestimate their competence.¹⁸⁵

To some extent, the under-estimation of children's capacities derives from a view of childhood as a separate and discrete experience or stage characterised by different needs from those of adults. By creating contained environments for children, such as schools, playgrounds, youth clubs and nurseries, the perception of children as different is reinforced. Childhood is defined as a period of learning and of play, and it is often children's playfulness that 'condemns' children in adult eyes as incompetent. However, children are capable of moving between work and play, between more and less responsible roles. Punch's research in Bolivia demonstrates that children frequently combine work with play both as a means of making work more pleasurable but also as a means of consolidating knowledge.¹⁸⁷ Indeed, children move in and out of roles of responsibility in accordance with external demands. It is only when play and work are separated that play becomes trivialised as a 'childish' activity in the eyes of adults, confirming a view of children as lesser, or lacking in responsibility. This research raises questions regard-

Learning from children

The Indian country programme of Save the Children UK decided to involve children ages 12 to 15 years in the development of an awareness campaign on HIV/AIDS.¹⁸⁶ Children felt that the existing messages from health professionals actually increased the stigma associated with the illness. The aim of the project was to design a programme that would engage young people in prevention. Given the sensitivity of the issue, the process needed to be addressed very carefully. SCF worked to convince their own staff, their partners, local parents and communities that children had the capacity to contribute. They needed to strike a fine balance between overburdening and underutilizing children's skills. There was potential tension between traditional parental expectations of children's behaviour in public spaces and children's own demands for participation in the community and family decision-making.

The outcomes were striking. The children were able to respond to the external environment very strategically, recognising the need to adjust their demands according to the level of support or hostility. They demonstrated a capacity to get involved in all levels of project management, planning, implementation, review and monitoring. The project had significant impact on community awareness about the stigma and discrimination associated with HIV/AIDS. Perhaps most importantly, the programme had a profound effect on the adults associated with the participating children. Whereas there had been initial resistance from many parents, once they saw what their children were capable of achieving, they became immensely proud of them. The SCF staff observed that the process had challenged their more limited assumptions about children's capacities and also strengthened their own skills, resulting in mutual benefit and learning.

ing the extent to which childhood should be protected from adult responsibilities and whether such responsibilities contradict the essence of childhood.

3.2.5 The exercise of agency by children

To imagine that most children do not make decisions or take responsibility from an early age romanticizes the notion of 'childhood'. Even small children in very protected environments become involved in making decisions about friendships, coping with parental divorce and negotiating between parents in conflict, deciding what games to play and negotiating rules.¹⁸⁸ Research among 9-year-olds in London revealed that they live complicated lives, 'managing bodies, brains and emotions in the highly structured world of schools'.¹⁸⁹ They take charge of books, clothing and equipment needed for the day, they cope with and negotiate social relationships with peers and staff, organise home-

work and manage deadlines. In addition, in the context of changing family patterns, many were offering support to their mothers in the aftermath of divorce, negotiating relationships with new family members and negotiating contact with the absent parent. But neither the children, nor the adults around them, defined these activities in terms of responsibility. Nor were their 'chores' defined as work – helping at home, looking after younger children, and school work. Adults defined work as something for the general good, whereas what children did was for themselves and therefore not work. Children's work is thereby rendered invisible and not accorded status or respect in the eyes of adults.

Blanchet found that parents in Bangladesh give scant credence to the agency of children to exercise responsibility, understand right from wrong or act autonomously.¹⁹⁰ When children behave badly, or become 'spoiled', it is accounted for in terms of poor parenting and lack of discipline, a bad environment or attacks from enemies.

Alderson argues that even very young children, who are necessarily dependent, are capable of exercising agency with respect to choices they make, exerting power over adults or using persuasion to get what they want and that, accordingly, inter-dependence is a more accurate construction of the relationship between adult family members and children.¹⁹¹ This process is well illustrated in Punch's research, where children's economic contribution to their families affirms an interdependent relationship. The children consistently demonstrated the extent to which they renegotiated adult-imposed boundaries, asserted autonomy and took initiative to shape their own lives. While in a relationship of relative powerlessness, they nevertheless adopted a range of strategies, including those designed to avoid work, to enlist support in tasks undertaken or to renegotiate workloads. These strategies involved using younger siblings, pretending not to hear, prolonging tasks in order to avoid others, demonstrating the burden of the workloads, negotiating between tasks or between siblings.¹⁹² Punch argues that the transition from childhood to adulthood is not a linear process from dependence and incompetence to independence and competence, but rather, that children move in and out of these roles in relation to their own personality, their place in the family, their gender and in response to differing expectations and tasks being demanded of them.

Children in families of widely differing cultural, economic and social contexts demonstrate that, far from being passive recipients of a predetermined process of development, they are active agents in a process of constant renegotiation with differing levels of dependency and competence at different times in accordance with different needs. Children use their resourcefulness not only to modify adult imposed boundaries to render them more acceptable, but also to contribute towards the social and economic strength of the family.

At the broader level of organisational participation and decision-making, the many thousands of initiatives that have blossomed over the past 15 years provide vivid testimony to the capacities of children, including young children, to act as researchers, campaigners, advocates and policy analysts, all areas traditionally seen as outside the competence of children.¹⁹³ There are growing numbers of child-led organisations in which children take lead responsibility for all aspects of the work.¹⁹⁴ Children are actively engaged in initiatives from the local to the international: from negotiating resources for their village school to the development of policy in international arenas.

3.2.6 The right of all children to have their capacities respected

Article 2 of the Convention on the Rights of the Child demands that all rights extend to all children without discrimination of any kind. This principle applies to the rights to respect for evolving capacities, as to all other rights. However, it remains the case that different groups of children are often treated with differing levels of respect. These differences can impact profoundly both on the opportunities afforded to children to develop their capacities, and the levels of recognition given to those capacities. In many cultures, for example, girls are significantly discriminated against within families. They may be denied access to education, afforded less freedom, subjected to abuse, allowed fewer opportunities for play and recreation, or married against their will at early ages. Many children with disabilities, too, in countries throughout the world are marginalised, denied education, exposed to abuse, emotionally rejected, and socially isolated. And children from minority groups, low castes, or indigenous communities frequently experience negative assumptions about their competence, their integrity and their abilities to learn. In all these cases, children's self esteem and sense of self worth is undermined and their opportunities for growth diminished.

Children with disabilities advocating the rights of other children with disabilities¹⁹⁵

In Nepal, a children's club in one village has a number of children with disabilities taking a lead role. They decided to address the problem of parents failing to enroll their children with disabilities in school. They undertook a house-to-house survey to identify all the children with disabilities in the village. Many were not in school. The children counselled the parents to persuade them of the value for children with disabilities in receiving an education. Where the parents were too poor to afford the costs associated with education, the children raised the necessary funds to help. These activities not only demonstrate the capacities of children to undertake a piece of systematic research, but also to utilize the findings for advocacy on behalf of a marginalised and disadvantaged group of children within their community.

Their feelings about this treatment, its assumptions of different capacities and its consequent impact are powerfully reflected in the following comments:

"One of the problems is the inequality of men and women which has caused great damage to the integrity of women. We must end the myth that boys must be taught to be strong, lead and dominate and that girls must be taught to be delicate, lovely, serve and be pleasing. All these qualities should be the character traits of both sexes. The world has to understand that if a boy washes dishes, his hands will not fall off and that girls have sufficient intelligence to build computers and be future diplomats. Both sexes should have the same education, the same options and the same responsibilities."¹⁹⁶

– 18-year-old girl from Brazil

"When we walk down the street we get picked on just because you think we are different from you. But you're wrong, we're just the same, it's just that our beliefs and culture are different. You think you can get rid of us. You think if you were us and we were you, what would you feel? You'd feel useless, you'd feel abandoned from everyone and everything. You wouldn't like it at all."¹⁹⁷

– Ethnic minority child from the UK

"Disability is in the eyes of society. It is not in our eyes. If given a chance, we can prove our worth. Disability is a mental problem – one of attitudes."¹⁹⁸

– Children with disabilities taking part in a consultation day in Nepal

When given opportunities to participate in processes and initiatives that afford them greater respect, children demonstrate their ability to challenge and overcome these experiences. In a number of case studies of children's participation commissioned by the South Asia region of UNICEF, it became clear that children's involvement with each other began to break down gender and class barriers.¹⁹⁹ Indeed, many boys cited their increasing intolerance of discrimination against girls as an outcome of their participation. Children's active participation in initiatives provides the most effective demonstration of how to counter prejudices and assumptions about their limited capacities.

3.2.7 Summary

Our current knowledge about children's capacities for informed and rational decision-making in their own lives remains limited. Much research into children's capacities continues to be based on theoretical assessments, divorced from children's own direct experience and based in Western countries. There is inadequate comparative data looking at the contrasting competencies of children in differing social, economic and cultural environments.

It is increasingly clear, from an overview of recent research of children's own perspectives and experiences, that adults consistently underestimate chil-

Demonstrating the capacities of children with disabilities²⁰⁰

Listen to Us

Save the Children UK has established a project called Listen to Us, in which 22 children with disabilities from districts throughout Nepal who have been successful in getting an education in mainstream schools are encouraged to share their stories and their success with other children with disabilities. The children organise community gatherings in their villages to explain how they benefited from education. They form local groups to provide mutual support and encouragement. A famous Nepali writer has worked with them to collect their stories and published them in a national newspaper. This raises the profile of disability, provides positive role models and inspires other children. The children's message is: "We don't need financial help. If we create a 'hunger' in the hearts of children with disabilities for going to school, then she or he can find their own path. And if teachers and parents become supportive, all problems can be solved and thousands of children with disabilities can come to school."

Voice for Education

Another SCF UK project has sought to enable and encourage children with disabilities to obtain primary education by drawing together role models – children who had successfully overcome discrimination, poverty and immense physical and social barriers to become high academic achievers. Initially, the project identified key individuals in villages to mobilise support and encourage parents to send their children to school. Once some children with disabilities were in school, they began to serve as role models for other families. The project has continued, using community motivators who help children share their stories and advise other communities on the benefits of education. These children talk to other children, to government officials, to parents and the media. The project is now operating in 32 villages in three districts.

dren's capacities. This misconception takes different forms in different cultural contexts. In many developing societies, children are acknowledged as having the capacity to take on high levels of social and economic responsibility. However, their rights to negotiate those contributions, or to exercise autonomous choices are likely to be more restricted. In most Western societies, a different pattern exists. While, in theory, a high premium is placed on civil and political liberties and autonomy, children are denied opportunities for participation in decision-making and the exercise of responsibility in many areas of their lives, because of extended social and economic dependency and an enhanced perception of the need for protection. This, in turn, reduces opportunities for developing the capacities for emerging autonomy, which then serves to justify their exclusion from decision-making.

Children's physical immaturity, relative inexperience and lack of knowledge do render them vulnerable and necessitate specific protections (see next section). However, in many cases, children are denied opportunities for decision making in accordance with their evolving capacities. Neither legal frameworks, nor policy and practice in most countries throughout the world give sufficient consideration to the importance of recognising and respecting the capacities of children.

3.3 A protective concept: Protecting children from experiences beyond their capacities

3.3.1 Protective rights in the Convention

The Convention recognises that childhood is a period of entitlement to special protection for children as a consequence of their relative inexperience and immaturity. Article 19 broadly calls upon States to 'take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse...'. Article 37 requires that when children are deprived of their liberty, account must be taken of the needs of their age. And Article 40 provides that if a child is charged with an offence, parents should be present at any hearing, 'taking into account (the child's) age or situation'. It also imposes an obligation to establish a minimum age below which children cannot be held criminally responsible, although it does not specify what that age should be. Article 32 requires the introduction of the provision of a minimum age for admission to employment. Article 38 is unique in the Convention in identifying a specific age below 18 for protecting children, stating that children under the age of 15 years should not take part in hostilities.²⁰¹ Other provisions acknowledge that children's lack of experience and maturity entitle them to protection from drug abuse, and from sexual, economic and other forms of exploitation.

Perhaps most fundamentally, the obligation to give primary consideration to the best interests of the child reflects the view that childhood is a period of relative vulnerability, limiting children's capacity either to engage in certain activities or to take the necessary action to protect themselves from any consequent harm. Accordingly, Article 3 requires that children's best interests must be a primary consideration in all actions concerning them. The obligation to have regard for the best interests of children is also acknowledged in Article 9, non-separation from parents; Article 18, the concerns of parenthood; Article 20, alternative care of children; and Article 21, adoption.

A clear implication of Article 5 is that not only

should parents respect the capacities of children to exercise rights on their own behalf, but that equally they should not impose excessive demands on them beyond their capacities. Furthermore, the State has an explicit role to play in introducing the necessary legislative, policy, educational and administrative measures to make certain that children are not exposed to experiences beyond their developmental capacities. While there are widely divergent assumptions across communities as to what levels of protection are appropriate for children, how those protections should be provided and the balance between the child, the family and the State in their provision, it is nevertheless the case that in all societies, there are laws and cultural practices and mores that demarcate those aspects of adult life from which children are entitled to protection.

3.3.2 Balancing protective and participatory or emancipatory rights

One of the most fundamental challenges posed by the Convention on the Rights of the Child is the need to balance children's rights to adequate and appropriate protection with their right to participate in and take responsibility for the exercise of those decisions and actions they are competent to take for themselves. It is essential to reconcile the potential conflict of interests between the right to protection and the right to actively participate in decision-making.²⁰² As Boyden and Levison put it: '...Supporting children's best interests requires the perspective not just that children need special protections, but that they have valid insights into their well being, valid solutions to their problems and a valid role in implementing those solutions. Such an approach acknowledges children not merely as beneficiaries of intervention by adults, or a future societal asset, but as competent social agents in their own right'.²⁰³

However, as the previous section has outlined, there is no simple formula for assessing when individual children are competent to take responsibility for decisions affecting their lives. Furthermore, in practice, much of the vulnerability of children derives not from their lack of capacity, but rather, from their lack of power and status with which to exercise their rights and challenge abuses. The current legal systems of most Western countries are based on a protection model, applying a presumption of incompetence in order to limit children's opportunities to harm themselves. In the legislation of many developing countries, there is an absence of recognition of children as needing special protection. Very few countries have evolved models that address the need to empower children to participate in their own protection.

Particular difficulties arise as children reach adolescence. Adolescence is a period of significant life change, characterised by rapid physical development, sexual maturation and growing social expectations. It is during this period that children begin to relinquish many of the protective structures and

securities provided in childhood. In their place comes the need to forge a new identity, the acquisition of new responsibilities and exposure to greater risks. However, during this period of change, young people under 18 years continue to be recognised as 'children' under the Convention on the Rights of the Child. They are therefore still entitled to the protections that it embodies. But providing appropriate protection in ways that both enable young people to extend their boundaries, exercise choices and engage in necessary risk-taking, while not exposing them to inappropriate responsibility, harm and danger is a challenge in all societies. As with any period of change, adolescence is a time of increased vulnerability. In the rapidly transforming world in which young people are growing up, this vulnerability is significantly intensified.

On one hand, taken as whole, adolescents are now better educated, better informed and healthier than ever before.²⁰⁴ However, there is also a downside. Ready availability of drugs, high risks associated with sexual experimentation, unemployment, competitive educational environments, economic pressures leading to separation of family members in search of work, enhanced aspirations for material goods driven by the global markets and the accessibility of the electronic media, are the territory many young people have to negotiate. And too often, they are doing so without any 'blueprint' to guide them. Traditional rituals demarcating the transition from childhood to adulthood are being eroded, in large part as a consequence of globalisation. Indeed, it is argued that young people are forced to bear the costs of globalisation to a greater extent than other groups in society. Young people increasingly negotiate the transition to adulthood on their own. The gulf of experience and expectation between parents and their children has never been wider. The world in which many young people are growing up is unrecognisable to their parents, rendering it harder for them to comprehend the challenges facing their children and the appropriate levels and nature of protection needed. Global corporations are competing with the family and school to become the most influential institutions in young people's lives.²⁰⁵ Yet, unlike parents, these institutions bear no responsibility for young people, are not accountable to them and have no interest in them other than their spending power.

The challenge of balancing the participatory and protective rights of adolescents needs to be understood in the context of these broader factors. It is significant that the Committee on the Rights of the Child has given priority to the drafting of a General Comment on adolescent health and development in which it observes that it is because States parties have 'not given sufficient attention to the specific concerns of adolescents as rights holders and to promoting their health and development', that it has felt it necessary to draw attention to the issue.²⁰⁶

The nature of the protections that children are entitled to fall into four broad areas:

- **Protection from physical and emotional harm** – The need for family or alternative care, love and affection.
- **Protection in personal decision-making** – The need for help in making decisions that directly affect children’s own lives but which they may lack the experience or knowledge to make in their own best interests.
- **Protection from harmful social or economic factors** – The need for protection from the harmful affects of armed conflict, protection within criminal justice systems and in situations of employment, and protection from harmful legal and illegal drugs.
- **Protection from exploitation and abuse** – The need for protection from trafficking and from sexual exploitation, as well as protection from early marriage.

■ *Protection from physical and emotional harm*
 Responsibility for providing physical and emotional care for children, and protecting them from harm in their daily lives rests primarily with parents or other members of the extended family. Children begin life totally dependent on adults. In addition to love, emotional support and care, parents set boundaries, and make decisions on behalf of their children to guarantee their safety. As they grow older, the needs diminish, although the need for continuing bonds of affection and care remain. Few countries, to date, legislate on the detailed obligations of parenthood. It is only when parents explicitly fail to provide adequate standards of care and protection that the State will step in. Accordingly, decisions about the level of care provided, and the ages at which children begin to take responsibility for their own protection and care are largely decided within the family, rather than as a result of legal boundaries.

As already observed, the nature and extent of care perceived as necessary by parents vary widely according to cultural, economic and historical determinants. Children in the fishing village of Angang in Taiwan are actively encouraged to take part in survival strategies that ‘build up the body person’. Inuit children are taught survival strategies by experimenting with uncertainty and danger, the idea being that they should utilize instability and solve problems quickly as they arise. Contrast this with the growing emphasis in most European countries on protecting children from their environment, as fears of traffic accidents and abduction have grown. In 1971 in the UK, for example, 80 per cent of 7- to 8-year-olds were allowed to go to school alone, but by 1990, the figure had fallen to 9 per cent.²⁰⁷ The expectation that children will take care of themselves or younger siblings is considered normal and functional in many societies, but dangerous and neglectful in others. These differences exist even between Northern European countries. For example, whereas in the UK it is generally considered inappropriate to leave a 10-year-old alone in the home, in Norway there is widespread acceptance of such practices.²⁰⁸ Clearly, Norwegian and British children do not have innately different levels of competence

to look after themselves and needs for protection. Rather, these differences indicate the widely divergent societies in which children live and the expectations placed on them, as well as the extent to which protection of children needs to be understood in the context in which it arises.

What is clear from these examples is that even very young children demonstrate considerable capacity when high expectations for their own care and protection, and that of other family members are placed on them. The impact on children of these demands, whether positive or negative, will be mediated, at least in part, by their degree of social acceptance.²⁰⁹

However, when the demands are too high there is profound detriment to children’s development. Evidence from sub-Saharan Africa indicates that when heavy workloads leave parents with little time for active parenting, children feel the subsequent demands on them are even more harmful than the consequences of inadequate food.²¹⁰ And, as war and HIV/AIDS produce a growing number of child-headed households, it becomes apparent that many young children who are carrying high levels of family responsibility do so at enormous cost to their well-being.²¹¹ A research project in the UK interviewed young people aged 15 to 25 about their experiences of entering into foster care.²¹² The average age at which they entered foster care was around 10-years-old. The researchers found that

Coping in situations of armed conflict²¹³

A project in Uganda and Sudan involved dozens of young people interviewing 2,000 adolescents and adults about their experiences of living in situations of armed conflict. The findings are stark. The adolescents say that the combination of war, massive displacement, HIV/AIDS, lack of development and poverty has created a world of unimaginable misery for them. Without family support, they are at greater risk of forcible recruitment into armed combat, becoming heads of households, experiencing sexual violence and being required to generate a livelihood. However, these problems are made worse by the fact that, despite shouldering these heavy responsibilities and rights abuses, their opinions are ignored when decisions are made that affect their lives. There is little recognition given to the contribution they are making or respect for their changing role in society. They feel that they have little control over their lives and that traditional authority structures requiring unquestioned respect from young people have not adapted to the challenges young people face or the contributions they are making. The research revealed a strong desire and capacity from young people to be involved in advocating on their own behalf, implementing programmes, monitoring their own protection and providing leadership for constructive societal change. Yet, they also want more support from adults and an easing of their burdens.

when the children were living in abusive or neglectful families, many had developed very high levels of skills and strategies for survival, particularly at the practical level of cooking, parenting and housekeeping skills. But once they were taken into foster care and those responsibilities were removed, they felt that a burden had been lifted from them. They described the experience as a haven from violence that offered them a chance to relive their childhoods.

While children can demonstrate capacity to take considerable levels of responsibility for themselves and others, it is likely to be a harmful experience unless it arises in the context of adult protective care and support. Age here is less relevant. Rather, it seems that with cultural and community endorsement, and in the context of a supportive family environment, young children are capable of exercising responsibility in relation to both their own and siblings' care, and so doing promotes mental health and psychosocial development.²¹⁴ Children also offer emotional support and care to their parents, again demonstrating the interdependency of familial relationships as mutual and reciprocal. The expectations and confidence of parents and children, prevailing social attitudes, the immediate needs of the family and the nature of the external environment are the critical determinants of the capacities that children acquire, and its impact on their well-being.

The State has a key role to play in providing 'appropriate assistance to parents...in the performance of their child-rearing responsibilities' (Article 18) in order that parents can provide adequate protection for their children. It also has a responsibility to intervene when parents' failure to do so jeopardises the well-being and development of the child. Clearly, in light of the very widely divergent assumptions about what constitutes appropriate care and the capacities of children to take responsibility for themselves, it is important that such interventions are sensitive to the cultural context of the families concerned. The challenge is to support those levels of responsibility that generate skills, competence and confidence among children without exposing them to inappropriate risk.

■ *Personal decision-making*

When children are young, most of the individual decisions made for their protection are taken by the adults with responsibility for them. The rationale for giving parents rights and responsibilities in this regard is that children lack the competence to exercise judgement in their own best interests. With a very young child, parents will take decisions with respect to, for example, crossing the road, provision of an adequate diet, and choice of appropriate clothing. As the child grows older, issues such as choice of school, playing out, choice of friends, and doing homework become more pertinent. When the child reaches adolescence, and depending on the cultural environment, decisions relating to staying on at school, starting paid employment, negotiating sexual relationships, choice of religion, leaving home, custody and access in separating families and consent

to medical advice and treatment may become the issues of concern. In most of these areas, the transfer of control over decision-making will be resolved within the family. It is informed by a range of factors: cultural traditions and practice, gender, individual predisposition of the family members, specific circumstances affecting the family and external events. But the process is the same. There will be a gradual assumption of the right to exercise decision-making on the part of the child as their parents or guardians perceive them to have the competence to make informed and competent choices.

The challenge for parents is in assessing what level of autonomy is consistent with adequate levels of protection. There are no fixed or easy answers. However, there are a number of factors to be borne in mind in making these assessments:²¹⁵

- The failure to create consistent boundaries with clear explanations for their existence can create insecurity for children, providing them with no guidelines on what is expected of them.
- Lack of knowledge or experience may make children less confident than their parents, who may have wider horizons of knowledge and therefore more confidence in their children's capacities.
- By corollary, children's confidence in their capacities may be based on an inadequate understanding of the risks involved.
- Over-protecting children denies them opportunities to gain confidence and ability to make informed choices and contribute towards their own protection.
- Subservient children, unaccustomed to exercising choices or challenging adult authority, may be more vulnerable to abuse and exploitation by adults.
- Refusal to allow children to make those decisions they feel competent to make does not necessarily protect them. Children may continue to engage secretly in forbidden activities but lie to their parents. They may even participate in risky behaviours they would not otherwise engage in, as a way of demonstrating their maturity.
- The imposition of over-protective boundaries may lead to resentment and a lack of communication with parents resulting in a weakening of the ability to advise, support or influence children.
- Failing to respect children's right to make choices may lead to their more complete rejection of the very beliefs, values and behaviours that parents are seeking to promote.
- Access to appropriate information is a key to promoting children's protection, and helping them make safe and appropriate choices. Denying such access does not prevent children from taking risks but rather increases the likelihood that they will fail to protect themselves adequately in doing so.

The failure of over-protection is powerfully illustrated by a girl taking part in a UNICEF consultation in Bangladesh who observed: "I always have to explain and answer for all my movements and for all the times I have to go out of the house. If I tell my parents that I will go to the Muslim Hall to see a

film, they would never agree to it. Because of this, I am forced to lie to them. I tell them I am going to the teacher's house when, in fact, I am going to my favourite places, either to watch a movie or to see an exhibition. I do not enjoy lying to my parents at all. These little lies make me feel guilty all the time. But when I see that I can get away with it, why wouldn't I lie?"²¹⁶ Conversely, the dangers of under-protection can be witnessed around the world among children exposed, without support or supervision, to alcohol, harmful drugs, sexual experimentation, and violent and sexually explicit media.

Many decisions are subject to legal boundaries that demarcate the age at which the law considers children competent to take responsibility to exercise choices. Some jurisdictions will provide an age when children are entitled to choose their own religion, to give consent to medical treatment or to adoption, to have access to legal counselling without parental consent, to be heard by the courts when their parents are divorcing, to change their name or to join associations. Others give children the right to make their own decisions in these personal matters once they are judged to have 'sufficient maturity'.²¹⁷ Whatever form they take, such laws seek to protect immature children from decisions that they lack the competence and experience to make for themselves. For the vast majority of children the law will never be invoked, but where there is a dispute between parents and children as to the child's right to exercise these choices, the courts can be brought in to make a judgement.

Legislations differ significantly as to the ages at which children are deemed competent to make their own decisions. For example, in British Columbia, the law states that 'an infant may consent to health care whether or not that health care would, in the absence of consent, constitute a trespass to the infant's person, and if an infant provides that consent, the consent is effective and it is not necessary to obtain a consent to the health care from the infant's parent or guardian'.²¹⁸ There are two qualifications to the child giving consent. Firstly, the health care provider must have explained to the child and been satisfied that he or she understands the nature and consequences and foreseeable benefits and risks of the proposed health care in order for the consent to be valid. Secondly, the health care provider must have made a reasonable effort to determine that the health care is in the child's best interests. The legislation thereby reverses the usual presumption of the child's incompetence. The onus is on the health care provider to demonstrate that the child is incompetent, before that child's consent can be overruled.

In the UK, children deemed to be competent to understand the implications of proposed medical advice or treatment are entitled to give their own consent, but if they refuse consent, they can be overruled by the courts up to the age of 18 years. Sri Lankan law adopts a principle whereby boys at 16 and girls at 14 years are considered to be compe-

tent to exercise choices in personal decisions affecting their lives.²¹⁹ In addition, it recognises the concept of tacit emancipation whereby permission granted by a parent can bestow the child with legal and contractual capacity, and children over 10-years-old can only be adopted with that child's consent. Significantly, the Government comments that these laws are framed without reference to the actual maturity of Sri Lankan children. However, in Poland, no child can give valid consent until they are 16-years-old.²²⁰ In many countries, the law fails to address the issue at all.

In general, it is probably correct to say that laws in most countries are framed without reference to children and do not take account of what available research exists with respect to children's capacities, the importance of creating opportunities for children to demonstrate capacity, or the most effective strategies for promoting children's agency in avoiding harm. Likewise, much professional practice fails to take cognisance of children's capacities in determining levels of protection from decision-making. Children themselves can and do argue that some of the protections 'imposed' by the adult world are unnecessary, inappropriate and intrusive.

■ *Protection from harmful social and economic factors*

The Convention recognises that childhood, defined as including all children below the age of 18-years-old, is also a period of entitlement to protection from certain activities and experiences that, while considered acceptable for adults, are deemed to have harmful or adverse consequences for children.

Children often feel over-protected

In Marshall's study of children's participation in child protection processes in the UK, she found evidence that the extent of protection offered by professionals exceeded what the children felt they needed.²²¹ A series of vignettes, exploring situations where a decision needed to be made about whether a child should be present at a case conference, were presented to groups of professionals, and then to groups of children who had direct experience of the child protection system. It was consistently found that the children felt they had a greater capacity to deal with the situation than the adults gave them credit for. Furthermore, they argued that exclusion from these processes was more harmful because it leads to anxieties about what is being said or done behind their backs. Adults' assumptions of the need to protect children from access to painful information meant that children were excluded from decision-making processes in which they felt they had the right and capacity to participate.

Similarly, in a survey undertaken among children with disabilities and their parents in Romania about the levels of independence the children were capable of accepting, the children consistently indicated that they were being over-protected at the cost of their own development.²²²

Thus, the underlying principle of the best interests of children governs all matters affecting children until they are 18. Article 32 of the Convention requires the introduction of a minimum age for employment. Article 40 establishes a minimum age below which children are presumed to lack the capacity to infringe penal law. Article 37 requires that children should not be held in custody together with adults. The Committee on the Rights of the Child has argued that the Convention, together with the Beijing Rules and the Riyadh Guidelines, imposes an obligation on States to introduce child-oriented criminal justice systems that are guided by the best interests of the child.²²³ Children are entitled to alternative protective care if their families cannot provide for them. Most countries have introduced legislation providing minimum ages at which children can smoke or drink alcohol, and impose heavy penalties for supplying children with illicit drugs.

However, there are wide-ranging differences between and within States as to what the appropriate ages for such protections should be. These inconsistencies point to the lack of a universal approach. In Georgia, the minimum school-leaving age is 14 years, yet children are not allowed to enter employment until the age of 16.²²⁴ In Sierra Leone, the law prescribes that children cannot leave school until 15 years but there is no legislation limiting child labour after the age of 12 years. In New Zealand, the age-limits for different forms of gambling vary between 16, 18 and 20 years, or no restrictions at all.²²⁵

In the UK, the age of criminal responsibility is 10 (8 in Scotland). This means that in the UK, children are deemed to be fully responsible for their actions and, by implication, fully competent to understand the consequences of their actions at the age of 10 years. However, the Children Act 1989, which recognises children's right to be listened to and taken seriously when decisions concerning their day-to-day care are taken, has no provision for allowing children to make those decisions until they are 16. The assumptions about children's capacities to take responsibility for exercising choices in their own lives, therefore, diverge widely with respect to criminal and civil law.

Assumptions about appropriate minimum ages of criminal responsibility also vary considerably between countries. Over 20 countries currently place the age of criminal responsibility at seven years, yet 50 others provide a minimum age between 14 and 18 years.²²⁶ These differences bear no relationship to the actual competencies of children, but rather reflect political and social attitudes towards both children and crime in those countries. The commentary on Rule 4 of the Beijing Rules on the administration of juvenile justice states: 'The minimum age of criminal responsibility differs widely owing to history and culture. The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility: that is, whether a child,

by virtue of his or her individual discernment and understanding can be held responsible for essentially anti-social behaviour. If the age ... is fixed too low, or if there is no lower age at all, the notion of responsibility would become meaningless. In general, there is a close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibilities (such as marital status, civil majority etc). Efforts should be made to agree on a reasonable lowest age-limit that is applicable internationally'.²²⁷ The Committee on the Rights of the Child has frequently expressed concern when the age is set too low, but it has not prescribed a specific age.²²⁸ However it did welcome a proposal from the Nigerian Government to raise the age of criminal responsibility to 18 years.²²⁹

The introduction of age-limits below which children cannot be prosecuted serves a number of functions. It is a recognition by a society that young children should not be held accountable for behaviour if they lack the competence to understand its implications. Age-limits also protect children from being drawn into the criminal justice system, which is likely to do more harm than good, as a consequence of their youth and vulnerability. They place responsibility on governments to prevent young people from coming into conflict with the law, rather than drawing them into the criminal justice system. And they acknowledge that interventions with children in difficulty need to focus on help and support rather than punishment.

Many children argue for a more nuanced approach to evaluating their competencies to participate in social and economic life, and their consequent need for protection. The role of work in children's lives and the extent to which it is harmful or beneficial to them provides an interesting example of the need for greater reflection. The same task under different conditions can have a very different impact on children. Grazing cattle in some areas involves moving as far as 50 kilometres and being away from home for up to a week, clearly placing young children at potential risk. In other areas, the task will involve working in the child's own neighbourhood for a few hours and will not therefore be harmful or hazardous.

Concerned for Working Children, an NGO in India, argues that interventions to protect children should reflect age, gender, ability and the conditions of work.²³⁰ They consulted a group of children in eight panchayats in India who felt that existing definitions of work in their day-to-day lives were irrelevant and inefficacious. Each group undertook a detailed analysis of all forms of work in which children were likely to participate, with an assessment of the ages and the contexts in which they felt it was beneficial or harmful.²³¹ All work viewed as harmful is defined as child labour. Their analysis has then been used as the basis for negotiating within their local community to become 'child labour free'. The children have proposed their recommendations in their local pan-

chayats (local village administration) and, once accepted, a task force comprising local people, including children, is established to oversee its implementation. This approach integrates local conditions and occupational hazards into policy formation and engages children directly in defining acceptable and unacceptable work, as well as in advocating, negotiating and monitoring those standards.

The differentiated analysis produced by the children is well illustrated in their assessment of children's capacities to work in the *beedi* (cigarette) industry according to the individual tasks involved. For example:

- **Bringing leaf and tobacco powder from the contractor** – Children aged 9 to 18 are capable of doing this work provided it is undertaken after school and does not interfere with their school work. However, children under nine are considered too young because it involves travelling away from home and requires the ability to read and sign forms.
- **Rolling the *beedi*** – No children under 18 years should be involved as it is a health hazard causing TB, back strain and headaches.
- **Delivering the *beedi* to the contractor** – Children aged 12 to 18 are able to undertake this work as they have the physical ability and knowledge, provided that it does not involve travelling more than one kilometre, or more than one hour's work per day. Children under 12 do not have the ability to do this work.

It is important to distinguish between universal protective rights of childhood that apply irrespective of individual children's capacities, and participatory or emancipatory rights that gradually transfer to the child. The rationale, for example, of a minimum age of 18 before joining the armed forces derives not from a view that children below that age are incompetent – clearly, many child soldiers do function very effectively – but rather, that children are entitled to protection from experiences that are disproportionately likely to cause them harm as a consequence of their youth.

Similarly, many young children have a well-developed morality and can appreciate the difference between right and wrong. However, the existence of these competencies does not justify them being held accountable on the same basis as adults in the criminal justice system and exposed to the full force of criminal law. Moral capacity does not necessarily equate with an understanding of the full consequences of one's actions. And the potential harm that can accrue from early involvement in the criminal justice system cannot possibly be justified in terms of any perceived benefits to children or the wider society. Children are entitled to have their moral, cognitive, and social capacities respected while simultaneously recognising their entitlement, as children, to protection from environments and experiences that will damage their immediate and long-term well-being.

■ *Protection from exploitation and abuse*

Children are entitled to protection from exploitation and abuse of their rights by individuals or institutions. Most States legislate to provide a minimum age of sexual consent, marriage and compulsory

The views of Indian children from Balkur on their capacities to work²³²

Cooking

We can do this work – we are children of ages 9-18

We have the information to clean and wash the rice and cut vegetables, besides the capacity to understand the process. For those of us who go to school, it is okay if we spend half-an-hour helping with the cooking in our own houses, but we should not stay at home and be engaged in this work for the whole day. It is harmful for us to work in somebody else's house or in hotels without going to school.

We cannot do this work – we are children of ages 0-9

We are too young to do any of these chores: We do not have the experience. Our hands are weak. Knives used to cut vegetables can hurt our hands.

Bringing grass or fodder

We can do this work – we are children of ages 15-18

To cut and bring grass, strong hands are required.

Whether we are school-going or not, if we are engaged in this work for not more than two hours a day, it is not harmful.

We cannot do this work – we are children of ages 0-15 and children with disabilities of any age

We do not have the ability and information. We cannot go far to collect grass. We cannot pluck or cut grass. We do not have the strength to carry the heavy bundles of grass/fodder.

Watering the plants

We can do this work – we are children of ages 3-18

From 3-9 years, our hands are strong enough to water the plants in front of the house for half-an-hour a day with a jug if the water is already available.

From 9-12 years, if we are in school we can water the plants for half-an-hour a day by bringing the water from a distance of half a furlong.

From 9-18 years, we have the required physical strength, strong hands and legs to do this work. We can draw water from the well and water our own paddy field and garden for two hours a day within a distance of one kilometre from the house.

We cannot do this work – we are children aged 0-3

We are too young and lack the strength to do any work.

Work in the hotel

We cannot do this work – we are children aged 0-18

Those who are engaged in these occupations should be very strong. Quite often to get work in a hotel we have to migrate to cities or towns, which means staying away from our homes. We will have to stay in the hotel with other adult employees, lacking even basic facilities. This can cause us both physical and moral dangers.

education, and many have introduced laws to restrict trafficking and sale of children, abduction and child prostitution. In a growing number of countries, female genital mutilation or cutting (FGM/C) has been banned. There is increasing recognition, actively promoted by the Committee on the Rights of the Child, that physical punishment in the family, schools or other institutions is incompatible with the Convention and should not be condoned.²³³ States parties are required to undertake all possible measures to protect children affected by armed conflict. The Optional Protocol on the involvement of children in armed conflict raises the minimum age for direct participation in hostilities to 18 years from the previous minimum age of 15 years, specified in the Convention. The treaty also prohibits all compulsory recruitment under 18 years of age.²³⁴

These protections fall into two main categories. Firstly, those issues where there is an absolute right to protection and respect for physical integrity demanded by the Convention irrespective of the age of the child, and on which the competence of the child has no bearing. The abolition of FGM/C, the protection from armed conflict, and protection from physical punishment would fall into this category. Children, however competent, cannot elect to deny their own rights, as these are, or should be, universal protections extending to all children. This perspective has been strongly endorsed by the Convention on the Rights of the Child as evidenced in the concluding observations to the UK government: 'The Committee is of the opinion that the Government's proposals to limit rather than remove the 'reasonable chastisement' defence do not comply with the principles and provisions of the Convention....since they constitute a serious violation of the dignity of the child. Moreover, they suggest that some forms of corporal punishment are acceptable, thereby undermining educational measures to promote positive and non-violent discipline'.²³⁵

Secondly, there are those areas of protection where an age-limit is introduced not only on the basis of assumptions about children's relative incapacity, but also to prevent adults in positions of authority in relation to the child from denying, abusing or exploiting the child's rights. Here, there is a more complex and sensitive interrelationship between the need for recognition of children's own capacity to exercise mature judgements and the role of legal protections.

At a more general level, the issue of the age of sexual consent poses particular difficulties in balancing the right to protection with the right to respect for evolving capacities. For example, some 14-year-olds may be capable of making informed choices about getting involved in a sexual relationship with someone of their own or similar age. They may well be capable of understanding the risks involved, taking the necessary precautions and making informed judgements about the nature of the relationship they are embarking on. However, others of similar age will not be ready for such encounters. And the

Views of some children in commercial sexual exploitation in Thailand²³⁶

Some children involved in commercial sexual exploitation claimed in interviews that they were not being exploited. They claimed that, rather, they were making a choice in the face of extreme poverty and a powerful sense of obligation to provide financial support to their families. These girls had made decisions based on their understanding of their limited alternatives. They saw their ability to make a contribution to the family as a filial duty. However, there is no doubt that the exposure to the commercial sex trade exposed these children to violence, drug abuse, HIV/AIDS, other health risks and social marginalisation. Many of the girls were taking drugs to deaden the pain and stigma associated with their lives, indicating profound difficulties in coping with the choices they had made. Clearly, the state has a responsibility to take action to criminalise those adults who exploit children. The state also has an obligation to seek to provide viable economic alternatives to parents and children, and an environment in which children's rights can be respected. It is equally important that any such measures are introduced in collaboration with those children and families affected.

situation is potentially different when the relationship is with an older partner who is more experienced, and more capable of manipulating or bullying the child into giving consent.

How then does the law reconcile these tensions? In recent years, and in the face of growing awareness of the extent of sexual abuse and exploitation of children, the international focus has been towards strengthening protections of children. For the Committee on the Rights of the Child, the emphasis has certainly been on protection: It has argued for the age of consent to be legally determined at a level designed to protect children from sexual exploitation. It has encouraged many governments to raise the existing age of consent. The case for protecting children against potential risks of exploitation and abuse is seen to take precedence over the right to respect for their evolving capacities of the child. Indeed, to date, little consideration has been given by most governments to the actual competence of the child to exercise choice in this matter, although many countries still fix different ages for boys and girls on the assumption that girls mature earlier. The Committee on the Rights of the Child has consistently challenged these differences, as it has challenged disparities between ages of sexual consent and the failure in some countries to provide for an age of consent for boys.²³⁷

With regard to marriage, the Committee on the Rights of the Child has strongly recommended that the minimum age of marriage for both girls and boys should be 18 years.²³⁸ The Committee on the Elimination of Discrimination against Women has adopted the same view on the basis that 'marriage

should not be permitted before (men and women) have attained full maturity and capacity to act'.²³⁹ The presumption is that no child, irrespective of circumstance, can have acquired the maturity to understand the consequences of marriage. The responsibilities of marriage are seen to be so significant, and potential adverse consequences of early marriage so serious, as to necessitate the imposition of a bar on any child under the age of majority. Early marriage, coupled with the associated consequences of pregnancy at very young ages, has profoundly negative impacts on girls' healthy development. Not only is early pregnancy associated with very high mortality risks – for example, research from a number of African countries indicates that girls giving birth under the age of 16 years are six times more likely to die giving birth than women aged 20 to 24 – but for every girl who dies there are 30 more who suffer injuries, infections and disabilities, many of which have lifelong consequences.²⁴⁰ The problems are compounded when a girl has been subjected to FGM/C.²⁴¹ The age-limit is designed to prevent children being betrothed and married against their wishes at an age when they are powerless to object. With regard to early marriage, the possibility of an individual child acquiring the competence to make an informed choice to marry under the age of 18 years is viewed as less important than the need to protect children, as a constituency, from potentially harmful decisions taken either by themselves or imposed by family members.

However, the recommendation to fix high minimum ages of both sexual consent and marriage is problematic. If the age of sexual consent coincides with that of marriage and both are set at 18 years, it effectively criminalises behaviour in which large numbers of young people are engaged in societies throughout the world. In Mongolia, research indicates that 37.5 per cent of 16-year-olds had started sexual activity.²⁴² In Zimbabwe, 30 per cent of girls between 15 and 19 years have had sex at least once.²⁴³ In the UK, 64 per cent of girls had sex before the age of 18 years, and in Iceland and Denmark, the figure is over 70 per cent.²⁴⁴ Indeed, in the UK, 25 per cent of girls and 33 per cent of boys have had intercourse before the age of 16 years.²⁴⁵ Furthermore, rendering sexual activity unlawful reduces the possibility of young people receiving the reproductive health care and advice that they need for their protection and safety. In consequence, measures designed to provide protection can have the reverse impact. On the other hand, the introduction of a different age for sexual consent and for marriage effectively endorses the fact that unmarried young people will engage in sexual activity, which may be unacceptable in many countries.

It is essential to prevent forced marriages and early childbirth. There is less consensus as to when young people should have the necessary information, advice, services and self-esteem to make positive informed choices about whether or not to engage in consensual sexual relationships.

3.3.3 Involving children in their own protection

The Convention on the Rights of the Child places explicit obligations on States and on parents to protect children. Such protection is recognised as a right associated with childhood. This derives from a shared recognition that children are entitled to specific protection until they have acquired greater physical and emotional strength, experience and knowledge. However, there are a number of arguments for reviewing the conventional protection model in which the child is constructed as the passive and vulnerable object caught between, on the one hand, the potential for harmful life experiences, and on the other, the well-meaning protection of concerned adults:

- There is a growing body of research that testifies to the failure of many adult-designed strategies for protecting children that deny children opportunities to contribute towards their own welfare. For example, the blanket removal of children from the garment factories in Bangladesh, the removal of children from the streets into institutional care, medicalised strategies of individualised therapeutic care for children in post-conflict settings, and medical models of addressing the situation of children with disabilities have all demonstrated that unless full consideration is given to the dynamics of the situation in which children live and the problems their families and communities face, efforts to 'protect' them can actually lead to a further deterioration in the protective environment.²⁴⁶
- There is growing evidence that children are capable of exercising agency and utilizing their own resources and strengths in developing strategies for their protection. Furthermore, active recognition of and support for children's engagement enhances their developmental capacities. Too often, the downside of being offered an entitlement to protection is that it offers less status and

Children's agendas differ from adult expectations

Research with children living on the street in Bangladesh indicates the extent to which children's agendas differ from those imposed on them by adults. Eleven children aged 10 to 15 years undertook a survey of around 50 children living on the street to identify their priorities in daily life. Contrary to the professionals' expectations that their priorities would relate to the need for health, education and care programmes, the children were far more concerned with violations of their civil rights. The majority of issues they raised concerned torture, injustice, exploitation, cheating, name-calling, never using the child's name, forcing the children to do unpleasant and 'bad' work and the lack of an adult guardian to assist them in realising their rights. The children wanted dignity and independence. The research provided clear evidence that children's views cannot be presumed by adults. It is imperative to involve children themselves in both the identification of problems and strategies for their solution.²⁴⁷

Strengthening respect for rights through building children's capacities

'Before I joined Bhima Sangha, a working children's union, I hardly spoke to others. I never went anywhere apart from my house, my fields and my village. I used to feel that it was wrong to talk to others, especially boys. Now I have learned to socialise easily and can speak up without hesitating. I can visit far away places and participate without fear or anxiety. Now I have the ability and the confidence to determine what is right and wrong. For example, when my family decided to take me out of school at the age of 11, I didn't react at all to their decision. In those days I used to think that whatever adults do is always right. But recently when my family and my community tried to make me marry against my will, I tried to convince them that this marriage was wrong. When discussions with my family failed, I protested against my proposed marriage with the help of the Bhima Sangha. Our protest was successful'.

Uchengamma, who tells this story, went on to become president of Makkala Panchayat, the children's village council, and led a protest movement against child marriage in her village in Karnataka in India.²⁴⁸

power with which to influence the means of protection provided. Failing to acknowledge children's agency wastes the opportunity both to draw on and strengthen children's potential coping strategies.

- Interventions are too often based on an adult understanding of the risks children face and the nature of protection they need, rather than being informed by children's own perspectives. As a result, the good intentions and available resources address the wrong issues with the wrong solutions. In the past decade, children have begun to make their voices heard and have called attention to the extent of violence experienced within the family. In response, family violence and its devastating impact on children has begun to be understood and addressed. Contrary to adult assumptions, there is evidence that some girls, as well as boys, volunteer to be child soldiers in order to gain access to social power, food, clothing and companionship. They perceive 'membership' in armed forces or groups as a means to social and economic status.²⁴⁹ This perception reflects the bleak alternatives available to girls and boys, and the urgent need to provide them with learning and vocational opportunities. It also indicates that awareness of and respect for their experiences must inform strategies for their protection.
- Over-protection can serve to increase vulnerability by failing to equip children with the information and experience they need to make informed choices in their lives.
- Protective approaches that make children dependent on adult support leave children without resources when those adult protections are withdrawn.²⁵³ The best interests of children will not be met by ignoring and consequently undermining

Children's views of being hit by parents

A UK study with 6- to 7-year-olds on their experiences of physical punishment reveals a very different perspective to that offered by adults.²⁵⁰ In defending the continued right of parents to hit their children, it is widely argued that parents are able to exercise appropriate restraint and judgement in the use of such punishments. However, children observe that parents hit their children when they have lost their temper and their behaviour is out of control. Children's graphic accounts of humiliation, pain and rejection they experience when their parents hit them contrast starkly with the widely promulgated view from parents that such punishment is delivered with love, does not cause real hurt and is only applied *in extremis*.

Over-protection increases vulnerability

Zimbabwean government policy with respect to reproductive health is simply to promote abstinence. In a study of adolescent reproductive health rights, 42 per cent of the young people reported a lack of information on forms of contraception and, in the absence of official provision of information, sought to acquire it from unreliable and ill-informed sources.²⁵¹ This leads to misconceptions that increase rather than reduce exposure to harmful behaviours. For example, 60 per cent of respondents believed that family planning leads to infertility, and many were convinced that condoms weaken sperm and that contraceptives cause viruses. The problem is compounded by the fact that medical staffs are required by law to inform the parents when children seek medical help or advice.

A survey of young people in transition countries of Central and Eastern Europe and the Commonwealth of Independent States (CEE/CIS) found that over 50 per cent reported having little or no information about HIV/AIDS and 60 per cent felt that they had little or no information about sexual relationships.²⁵² This ignorance disempowers them and denies them the opportunity to develop their understanding and take increasing responsibility for their own protection.

- the contribution that children themselves are capable of making.
- The scale of many national crises is undermining traditional family and community networks that served to protect children's well-being and development – for example, the HIV/AIDS pandemic in sub-Saharan Africa, the economic crisis threatening many CEE/CIS countries and numerous situations of protracted civil war and armed rebellion. In these environments, there is an acute need to harness children's own potential strengths in order to maximise their opportunities for survival and development.

Not only during crisis but in all instances, it is essential that child protection interventions are built

on the resiliencies, capacities and contributions of children themselves. Over-protection can be as harmful as under-protection. While children's entitlement to protection from harm necessitates the introduction of legal age boundaries and provisions for protective care and services, unless initiatives designed to provide protection respect children's participation and agency, they will not achieve their objective.

Children taking responsibility for their own protection

A Save the Children-UK initiative in Kampala involved 200 children in tackling child abuse in the community.²⁵⁴ The children were asked to identify their protection needs. On the basis of these findings they designed a range of activities and took responsibility for their implementation. The children, who ranged in age from 10- to 14-years-old, established a project steering committee of 18 children for the overall planning of activities to address protection needs, a management committee for handling the implementation of project activities, a child protection committee for investigating, hearing and handling cases of abuse and neglect, and an advocacy committee responsible for community sensitisation of child rights and child abuse. Members of these committees were all elected by other children in the community.

3.3.4 Summary

There is no simple way to determine the levels of protection needed by children or to decide the most effective means of providing protection. Respect for children's evolving capacity to take responsibility for decision-making must be balanced against their relative lack of experience, the risks encountered, and the potential for exploitation and abuse. The extent to which children are likely to be at risk of harm from any potential threat is significantly mediated by a number of factors:

- Degree of social and cultural acceptance of the behaviour, expectation or experience
- Level of support afforded by the key adults in the child's life
- Degree of agency experienced by the child in coping with the situation
- Child's personality and strengths

While there is a need for appropriate and effective frameworks governing the protection of all children, it is important that legislation, strategies and policies governing the implementation of programmes to provide protection are informed by children themselves. The conventional view of protection has been a one-way process, with adults as agents and children as recipients. The reality is more complex, involving a dynamic process that recognises children's capacities to contribute towards their own protection and allows them to build on their strengths.

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Part Two

**APPLICATION OF THE CONCEPT
OF EVOLVING CAPACITIES**

SECTION 1

DEVELOPING LEGAL FRAMEWORKS

Age is the key determinant in the acquisition of formal rights in many societies, with laws or cultural protocols stipulating thresholds at which children achieve greater autonomy over their own lives. However, as this paper has argued, the rigid application of laws prescribing ages at which certain rights come into play do not reflect the reality of decisions and levels of responsibility of which children are capable. What then, is the most effective legal framework for respecting children's rights to participate in decision-making according to their evolving capacities, while providing appropriate protection? What factors should inform the creation of that legal framework?

There are a number of possible models, each with benefits and disadvantages:

- Provision in law of fixed, prescribed age-limits.
- Removal of all age-limits, substituting a framework of individual assessment to determine competence to exercise any particular right. Alternatively, the law could introduce a presumption of competence, with the onus on adults to demonstrate incapacity in order to restrict a child's rights.
- Introduction of a model that includes age-limits but entitles a child to demonstrate competence and acquire the right at an earlier age.
- Providing age-limits only for those rights that are at risk of being abused or neglected by adults and introducing a presumption of competence in respect of other rights.

1.1 Fixed, prescribed age-limits for the gradual acquisition of rights

To a large extent, this is the model that exists in the majority of States parties to the Convention on the Rights of the Child, where the law prescribes a broad range of rigid age-limits – encompassing enrolment and attendance at school, sexual consent, marriage, consent to medical treatment, minimum age of employment, enrolment in the armed forces, age of criminal responsibility, the right to vote and so on. The historically wide variations in the ages at which these protections or acquisition of rights apply are slowly becoming more uniform, in some part as a response to the Convention on the Rights of the Child and the recommendations of the Committee on the Rights of the Child, although very significant differences across and within cultures do persist. Despite the broad acceptance of this model, it is rarely the case that prevailing legal frameworks reflect a thoughtful assessment of children's evolving capacities. Rather, as argued earlier, they indicate the economic and social priorities and needs of the State, as well as traditional assumptions about levels of necessary protection.

The advantages of a model based on fixed age-limits include the following:

- All citizens, adults and children have a clear understanding of when certain rights can be exercised.

- Explicit ‘rites of passage’ or benchmarks denote the process of growing up.
- The same rights extend to all young people at the same ages.
- The model is relatively simple to understand and to implement.
- The potential for disagreement in the exercise of rights between young people and parents is minimal.

The disadvantages include the following:

- The uniformity on the exercise of rights does not reflect children’s actual and differing capacities.
- The model is inflexible.
- Rights that require universal protections and those dealing with personal, differentiated decisions affecting individual children are not differentiated.
- Age-limits operating for different laws may be inconsistent.
- Affirms a view of children as lacking in competence, rather than building on their potential and tends towards an underestimating of children’s capacities.
- Tends to exclude children from decision-making and discourages the more democratic and respectful philosophy indicated by the Convention on the Rights of the Child.

While the model of fixed and prescribed age-limit provides the most straightforward and simple framework, its rigidity fails to comply with the principle of respecting the right of children to participate in decision-making in accordance with their evolving capacities. It also fails to allow for flexibility depending on the levels of risk involved and the degree of protection needed.

1.2 Removal of all fixed age-limits

At the other end of the spectrum is the possibility of removing all legal age-limits and substituting individual assessment of children to determine their capacity to participate in decision-making. This does happen in some traditional cultures. In Eritrea, for example, customary law among the Fithi Mehari Woadotat people prescribes that boys come of age not at a particular age but, rather, when the community considers them to be mature enough, which may be at any time between 13 and 20 years. Once they come of age, they can be a witness, participate in the community council, pay taxes and be armed.²⁵⁵

This approach is very much at odds with prevailing thinking and, indeed, is at odds with the Convention on the Rights of the Child, which does propose the introduction of certain legal age-limits. Nevertheless, it has been advocated by some child rights advocates as an alternative to the inflexibility of fixed age-limits. Its merits and defects therefore justify serious review.²⁵⁶ In the absence of fixed age-limits, there are two possible approaches to determining

competence. One possibility is that the onus should rest with the child to demonstrate competence. Thus, before a child was allowed to drive a car, a rigorous test to assess judgement, skill, dexterity, physical capacity and so on would have to be passed. Similarly, before a child could make a decision relating to medical treatment, she or he would need to demonstrate a level of competence in understanding the nature of the proposed treatment, its implications and the alternatives available. The second and more radical approach is to introduce a presumption of competence in the exercise of rights. The onus would then lie with adults – such as a parent, teacher, doctor or judge – to demonstrate incapacity in order to restrict that exercise of rights.

The advantages of removing fixed age-limits include the following:

- Allows each child to exercise rights in accordance with her or his individual level of competence.
- Encourages children to acquire skills and competencies.
- Challenges adult presumptions about the lack of competence in children and encourages a more respectful relationship between adults and children.
- Enables judgements about children’s capacities to reflect prevailing assumptions and experience, rather than legislation that may be outdated and out of touch.
- Eliminates the fixed inconsistencies that may exist within and between different parts of civil and criminal law.

However, the disadvantages are considerable:

- Costly and burdensome administration in order to assess individual children on a very wide range of legal matters.
- Considerable skills would be needed to judge children’s individual capacity.
- Removal of clear age-limits may result in some children failing to acquire certain rights.
- Potential inconsistency in widely divergent assumptions and mechanisms for assessing competence.
- Failure to acknowledge that some age-limits are in place in order to protect children from abuse or exploitation by adults.
- May result in disagreements between children and parents, and between children and the State, as all decisions affecting the child are exposed to debate.
- Fails to provide clear or consistent demarcations of emerging adulthood.
- Assessments of levels of competence may be influenced by prejudice and discrimination embedded in the culture, in particular for girls, children from ethnic minorities and children with disabilities.

Despite the superficial attraction of a system that allows for individual assessment, the sheer impracticality of this model militates against its adoption. Furthermore, its potential for exposing children to exploitation and abuse of their rights renders it unacceptable. Many countries do currently lack legislation on age-limits affecting key children’s rights.

For example, at least 22 countries have no specified age for compulsory education, 23 have no age of minimum employment and 30 countries have no minimum age for marriage.²⁵⁷ In fact, this lack of legislation reflects a lack of protection rather than a commitment to respecting the evolving capacities of the child. How would it be possible to guarantee the right to education without the imposition of compulsory education? Children may be competent to take part in the labour market and may be able to make informed choices about the need to contribute to their family income, but unless strict regulations are in place to prevent children from working in dangerous environments, they risk exposure to exploitation, abuse and serious damage to their health and well-being. The abolition of legal age-limits would potentially lead to greater abuse of children's rights.

1.3 Fixed age-limits with a right to demonstrate competence at an earlier age

This model combines the establishment of fixed age-limits, automatically entitling children to exercise certain rights, with a recognition that children may be entitled to exercise certain rights earlier if they demonstrate the necessary capacity. For example, the law might prescribe that a child's consent is needed for an adoption from the age of 14 years. However, a child of 12 years would have the right to argue that her or his consent should be required before an adoption was to proceed. One of the questions that would need to be addressed in this model is when the demonstration of competence would be sufficient to justify a reduction in the age-limit with respect to rights. In those areas of law dealing with private matters – such as adoption, custody and access, choice of religion, medical consent and legal counselling – age-limits could be reduced on the basis of individual competence. However, the demonstration of sufficient capacity would not be adequate to reduce the age-limit for entering into sexual relations, getting married, starting work, joining the armed forces, leaving school, smoking and drinking alcohol, or voting.

The advantages of fixed age-limits, combined with the opportunity to argue competence at an earlier age, include the following:

- Protects children while also acknowledging the need for flexibility in the application of age-limits.
- Capacity in one area of a child's life does not necessarily grant competence in all other areas.
- Provides legal guidelines but avoids the need for all children to be assessed with respect to the exercise of all rights.
- Provides a consistent basis for assessment of all children.
- Establishes patterns in children's development associated with age, while recognizing that individual children can and do vary significantly in their levels of understanding and competence.

- Allows children to demonstrate their evolving capacities and to have them respected.

The disadvantages include the following:

- Where a fixed age-limit applies, adults making decisions with respect to the child are unlikely to give sufficient consideration to the possibility of lower ages of competence.
- Considerable resources are required to assess specific capacities of individual children.
- Day to day implementation presents numerous challenges.
- Poor and marginalised children are less likely to have access to opportunities for challenging the legal age-limits.
- A lower age-limit with respect to rights may increase exposure to some forms of abuse and exploitation.

The model of a fixed age-limit with some flexibility based on demonstration of competence has advantages, although few current jurisdictions extend a flexible approach beyond limited aspects of private law. In New Zealand, for example, the law provides that children can consent to medical treatment once they reach age 16, but they can do so earlier if they can demonstrate competence.²⁵⁸ Swedish law provides that children from age 12 can veto the enforcement of court rulings on custody and access, but also allows children under 12 who have attained sufficient maturity to exercise that right.²⁵⁹ In Scotland, parents and others with parental responsibility are required to consider children's views when making decisions that affect the child, with children aged 12 presumed to be of sufficient age and maturity to form a view.²⁶⁰ In recommending this provision to be introduced in law, the Scottish Law Commission argued that the age-limit of 12 was in line with psychological evidence on children's intellectual development, but recommended that the word 'maturity', rather than 'understanding', be used to ensure that it was not merely children's cognitive development that is considered.²⁶¹ There is certainly scope for more consideration of this model to be introduced in the field of private law.

In the case of private or public law, it would be necessary to clarify that an application to exercise a right below the legally prescribed age-limit could only be instigated by the child. Even then it would have to be strictly enforced to prevent the possibility that adults might submit such applications against the best interests of children, whether in defence against a charge of statutory rape, or pressuring children to make decisions regarding custody, or recommending that a child below the age of criminal responsibility could be held criminally responsible.

Providing for the acquisition of rights in the public arena on demonstration of competence would be, for the most part, impractical due to the difficulty in assessing whether a child is competent to make a particular decision; for example, to sign a legal contract or view a certain film or undertake employment.

1.4 A mixed model differentiating between types of rights

A fourth model builds on aspects of the previous models, in order to respect both the rights to appropriate protection and to participate in decision-making:

- **Protection from self harm or harmful social or economic factors** – Where the exercise of the right might result in immediate and serious harm to self or others, a fixed non-negotiable age-limit would be imposed. This would apply, for example, to recruitment into the armed forces, possession of arms, alcohol and tobacco, and driving a car.
- **Protection from exploitation or abuse** – Where the absence of an age-limit exposes children to abuse or exploitation by adults – for example, sexual exploitation or child labour – a fixed age would be imposed irrespective of competence. The purpose of the age-limit would be to impose limitations on adult behaviour towards children, in recognition of children's vulnerability to abuse and exploitation.
- **Personal decision-making** – Where the exercise of the right impacts only on the child, but has both immediate and long term implications, the child's right to exercise choices would be determined based on competence, without fixed age-limits. This would apply, for example, with respect to adoption, placement in care, decisions following parental divorce, consent to treatment, choice of religion, choice of friends and choice of school. Alternatively, the law could operate with a presumption of competence, in which the onus would be on concerned adults to demonstrate that a child was incompetent if the child's right to take responsibility for a decision was to be overruled.

The advantages of this model include the following:

- Protects areas of potential vulnerability, while recognizing children's evolving capacities to participate in day to day decision-making.
- Avoids over-reliance on prescribed age-limits in personal decision-making and encourages serious consideration of children's capabilities.
- Provides potential for greater respect for children's capabilities.
- Provides flexibility and respects differences in children's evolving capacities.
- Assessment of capacity of individual children is limited to those adults with whom they have personal or professional relationships – parents, doctors, teachers, judges, social workers.

The disadvantages include the following:

- Without prescribed age-limits, some children may experience difficulty in demonstrating capacity.
- Absence of age-limits may be used by some parents or professionals either explicitly or by default to deny children the opportunity to exercise rights.
- Insufficient guidance for parents and professionals in determining the age at which children might be competent to exercise decision-making in key areas of their lives.
- The imposition of some fixed age-limits in order to provide protection may be seen to limit chil-

dren's opportunities to demonstrate capacity and take increased responsibilities for their lives.

- Significant divergence of views is likely as to the prescribed age-limits, particularly between adults and children.

Relatively few jurisdictions have substituted age-limits with a commitment to assessment of competence in personal decision-making, although some examples do exist. In the UK, a House of Lords judgement in 1985, known as the Gillick judgement, ruled that competent children are entitled to take responsibility for important decisions in their own lives.²⁶² One of the judges involved in the case argued that 'the parental right yields to the child's right to make his own decisions when he reaches a sufficient understanding and intelligence to be capable of making up his own mind on the matter requiring decision'.²⁶³ Although the Gillick judgement related to the right of a child to seek medical advice without parental consent, it has application in all areas of personal decision-making. The onus remains on the child to demonstrate competence. The judgement was never incorporated into primary legislation and was subsequently undermined by a Court of Appeal decision, which determined that while a competent child can consent to treatment, a parent retains a parallel right to consent and can thus override even a competent child's refusal to consent to treatment. This reduces the Gillick judgement to a provision that parents cannot veto affirmative decisions reached by the child.²⁶⁴

The application of legal frameworks demonstrating a flexible approach to consideration of age-limits is rare, but illustrates the potential for using the law to promote respect of children's evolving capacities.

1.5 Principles for determining legal frameworks

There are a number of principles that might be applied to the process of developing legal frameworks governing the exercise of rights:

- Legislators, judges and magistrates should be fully conversant with the Convention on the Rights of the Child and its implications for children.
- All relevant legislation should be scrutinised with respect to appropriate protection for children and with respect to their evolving capacities.
- Legislation that sets age-limits should include measures that respect children as the subjects of rights, with opportunities to exercise rights on their own behalf, consistent with their capacities and right to protection (see box below).
- Legislation should take account of prevailing research with respect to children's evolving capacities, bearing in mind the need to consider implications of the research in the local cultural context.
- Legislation should include mechanisms for enforcement and impose proactive obligations on public authorities to implement legislation and enable children to challenge violations.

- Effective coordination between government ministries should be facilitated to provide coherence and consistency in the application of age-limits. It is imperative to create a legal framework that is consistent, for example, with respect to education and employment, or between civil and criminal law.
- Recognition must be given to the principle of non-discrimination in the implementation of all rights. Different age-limits with respect to boys and girls violate this principle. Equally, the courts should not make broad assumptions about lesser capacities of particular groups of children – for example, girls, children from minority communities or children with disabilities. Where there is discretion in the assessment of children’s capacities, each case must be dealt with on its individual merits.
- Consultations with children should be held to encourage their full participation in the development of relevant legislation, reflecting their perspectives, experience and concerns, in particular with respect to balancing protection and participation in decision-making.

A positive example of respect for children’s evolving capacities in legislation

Does your policy need an age-limit?

The Ministry for Youth Affairs in New Zealand has issued guidelines for government departments and public bodies when determining age-limits in law and policy. The aim is to make certain that youth ages are used:²⁶⁵

- effectively and consistently in the broader policy context;
- without discriminating negatively or unjustifiably.

The guidelines suggest the following series of steps when formulating any age related policy:

Step 1

Is a youth age really necessary?

- What purpose would it serve – i.e. protection, empowerment, determination of entitlements or definition of responsibilities?
- Have potential alternatives been given careful consideration?

Step 2

Choose the appropriate age

- What is the desired purpose of establishing the age-limit?
- Will it be in the child’s best interests and, if so, how?
- Is the age-limit consistent with other laws?
- How will it affect children’s ability to participate in decisions that affect them and their broader participation in society?
- Is the age-limit consistent with the Convention on the Rights of the Child?

Step 3

Can you justify the youth age?

- Does the age-limit discriminate against young people? It is not acceptable to treat young people differently just because of their age.
- Does the age-limit impede access to benefits or entitlements for young people?
- Will the age-limit affect some groups of young people more than others and thereby indirectly discriminate?

Step 4

Seek young people’s contributions

Consulting young people in the decision-making process will mean:

- Better understanding of the best interests of young people.
- Avoiding assumptions that ‘adults know best’.
- Increased likelihood of respect for the law by young people.

Step 5

Be clear about why you have chosen a youth age

Set out the rationale and implications for the age-limit chosen in relevant documents.

Notes

255 Government of Eritrea, *Initial report of Eritrea to the Committee on the Rights of the Child*, CRC/C/41/Add.12, United Nations, Geneva, October 2002.

256 Holt, J., *Escape from Childhood: The Needs and Rights of Children*, Penguin, London, 1974.

257 Melchioore, A., *At what age?*, Raoul Wallenberg Institute, Lund, 2002.

258 Government of New Zealand, *Initial report of New Zealand to the Committee on the Rights of the Child*, CRC/C/28/Add.3, United Nations, Geneva, 13 October 1995.

259 Swedish Government, *Second periodic report of Sweden to the Committee on the Rights of the Child*, CRC/C/65/Add.3,

United Nations, Geneva, 11 February 1998.

260 Children (Scotland) Act, Crown Copyright, The Stationery Office, Edinburgh, 1995, s 6(1).

261 Scottish Law Commission, *Report on Family Law*, No. 135, The Stationery Office, Edinburgh, May 1992, paras. 2.63-2.65.

262 *Gillick v West Norfolk and Wisbech Health Authority*, *All England Law Reports* 402, 1985

263 *Ibid.*

264 Fortin, J., *Children’s rights and the developing law*, Butterworths, London, 1998.

265 The full policy document is available at www.youthaffairs.govt.nz.

SECTION 2

APPROACHES TO ASSESSING CHILDREN'S CAPACITIES

One of the challenges associated with the assessment of children's evolving capacities as the basis for the exercise of rights is the lack of effective definitions of competence, compounded by a lack of availability of skilled personnel for its assessment. Because age is widely assumed as a proxy for competence, it may be difficult for a young child to overcome adult presumptions of incompetence used to justify denying children the right to participate in decision-making in areas of their lives. It is argued, for example, that children under 18-years-old:

- Are less capable than adults to perceive or anticipate risks of certain behaviours.
- Have unrealistic beliefs about their invulnerability.
- Are too easily influenced by their peers or parents when making decisions.
- Have undue faith in information supplied by adults and are poor at critical analysis.
- Tend to focus on short-term gains rather than long-term implications.
- Fail to differentiate between salient and peripheral input in the information they use to make a decision.
- Lack confidence in their decision-making capacities and so are not committed to their decisions.
- Exhibit inexperienced understanding that inhibits their potential for effective search and assimilation of information.

It is worth pointing out that many of the same incompetencies are frequently witnessed in adult decision-making! Furthermore, as this paper has argued, with appropriate support and opportunity the above limitations to effective decision-making can be overcome. How then can these negative assumptions be countered, and what should be the criteria for that assessment?

Much of the thinking in terms of competence assessment has taken place in the context of medical consent, where the central elements of competence for decision-making are deemed to include:²⁶⁶

- **Ability to understand and communicate relevant information** – The child needs to be able to understand the alternatives available, express a preference, articulate concerns and ask relevant questions.
- **Ability to think and choose with some degree of independence** – The child needs to be able to exercise a choice without coercion or manipulation and to think through the issues for themselves.
- **Ability to assess the potential for benefit, risk and harm** – The child must be able to understand the consequences of different courses of action, how they will affect him or her, the risks involved and the short and long-term implications.
- **Achievement of a fairly stable set of values** – The child needs to have some value base from which to make a decision.

In the context of the criminal justice system in the US, competency is defined as 'sufficient ability to consult with his attorney with a reasonable degree of rational understanding as well as factual understanding of the proceedings against him'.²⁶⁷ Additional abilities have become accepted as part of the criteria, including ability to understand the charges, current legal situation, relevant facts, legal issues and procedures, the role of court personnel and potential legal defences, and the ability to relate to the defence lawyer, explain pertinent facts, tolerate the stress of the trial and behave appropriately in court.²⁶⁸

The same thresholds of competence are not necessary for all decisions, nor are all aspects of compe-

tence relevant for all types of decision-making or responsibility. One approach would be to apply a principle of proportionality, with a sliding scale of competence according to the seriousness of the decision.²⁶⁹ Where the risks associated with the decision are relatively low, it would be possible for children to take responsibility without demonstrating significant levels of competence. In order to override the child's expressed wishes, it would be necessary to demonstrate that the child is not competent to understand the implications of the choice *and* that the consequent risks associated with the choice would be counter to the child's best interests.

For example, a parent needs to restrain a two-year-old from running into the road or playing too near a fire. The child would not have the competence to understand the nature of the risks or the consequences involved. On the other hand, a very small child can, with support, take responsibility for many decisions where the risk threshold is lower. Provision of information about the weather and the potential activities of the day can enable a small child to make appropriate choices about what to wear. If a child refuses to wear a coat – a rational choice when in a warm dry house – it is possible to bring the coat and when the child feels cold, she or he can decide to put it on. In this way, children are helped to understand the implications of their choices and develop the competence, without placing themselves at undue risk.

With respect to decisions relating to health, a similar approach should be adopted. Children are entitled to sufficient time and access to appropriate information to help them understand the implications of proposed treatment, the possible alternatives, the side effects, the prognosis, likely recovery period and the implications of rejecting the treatment. Only then are children in a position to make an informed choice. If a child refuses to agree to treatment after these opportunities have been offered, *and* it is felt that she or he is not competent to understand the implications, *and* the treatment is essential and cannot be deferred, then it would be justified to override his or her refusal. However, the reasons for the child's refusal should be taken seriously and reflected in the way in which the treatment is undertaken. When a child is determined to be in a position to make an informed choice and deemed competent to understand its implications, his or her wishes should be respected. Where the child is not deemed competent and the treatment is necessary but not urgent, every effort should be made to help the child understand the need for the treatment and to explore ways of helping them overcome their concerns about proceeding.

It is important to recognise that not all children will operate at the optimal level of their competence. As

documented in Section 3, research indicates that children encounter a variety of obstacles that potentially impede their performance in tests to assess their competence. These obstacles may be familial, environmental, legal or individual.²⁷⁰ In any given situation, a number of factors will influence the child's level of competence: the child's intellectual ability, the level of support, expectation and encouragement provided by significant adults, the quality of information provided, the child's own history and experience, the child's willingness or otherwise to take responsibility for the decision, and the child's cultural environment. To date, too little work has been undertaken in developing either principles or tools for assessing capacity in the exercise of rights in differing spheres of children's lives or for promoting optimal levels of competence. If the commitment to respect children's evolving capacities is to be translated into practical reality, considerably more work will need to be invested in this field.

Issues to consider in addressing children's right to respect for their competence in health decisions

Alderson and Montgomery, in their analysis of the need for reform in the way children participate in their own health care decisions, conclude that many false adult assumptions limit children's participation.²⁷¹ They observe that:

- The standards of informed consent actually achieved by many adult patients is low.
- Idealised standards of consent are unrealistic and discriminate against children.
- Adults, including doctors and parents, can make misguided decisions.
- Competence cannot be precisely defined or assessed.
- Excluding children from informed discussion can increase fear and undermine cooperation.
- Forcing treatment onto uncomprehending and resisting children sets an example of 'adult might is right'.
- Force ignores the growing evidence of very young children's ability to reason, understand, imagine, and feel terror and despair.
- Denying an adult's right to physical and mental integrity constitutes an assault; a very strong case is needed before this right is denied to children.
- Responding to children's reservations can help adults learn from children and to assess the risks and benefits of treatment more realistically.
- The burden of decision-making need not be carried out by children alone; respect can be combined with support.
- Young children can be wise and courageous.
- Children with experience of illness or disability can contribute unique and essential knowledge during decision-making.
- Children and adults can work together towards the best or least harmful decisions.

Notes

266 Harrison, C. et al., *Bio-ethics for clinicians: Involving children in medical decisions*, Canadian Medical Association, Ottawa, 1997.

267 US Supreme Court, *Dusky v United States*, 362 US 402, 1960.

268 Redding, R., *Adjudicative competence in juveniles: Legal and clinical issues*, Juvenile Forensic Evaluation Resource Center, University of Virginia, Charlottesville, 2000; and also Melton, G.B. et al., *Psychological evaluations for the court*, Guilford, New York, 1997.

269 Wertz, D.C. et al., 'Genetic testing of children and adolescents: Who decides?', *Journal of the American Medical Association*, 1994, 272 (11), pp. 875-881.

270 Bowen, D., *Children's competency and participation in decision-making*, Third National Family Conference, Melbourne, 20-24 October 1998.

271 Alderson, P. and J. Montgomery, *Health care choices*, Institute of Public Policy Research, London, 2001.

SECTION 3

CREATING ENVIRONMENTS TO PROMOTE, RESPECT AND PROTECT CHILDREN'S EVOLVING CAPACITIES

Promoting, respecting and protecting the evolving capacities of the child involves far more than the introduction of appropriate age-limits. Realisation of the exercise by children of their rights in accordance with their evolving capacities can only be achieved through a holistic approach to implementation of the Convention. Accordingly, it has implications for all rights, demanding significant changes at all levels of society. It represents a fundamental challenge to conventional attitudes towards children. It demands recognition of their agency in decisions and actions that affect their lives. It necessitates questioning some deeply held assumptions about children's needs, children's development, protection of children and children's agency.

The appropriate balance between protecting children from harm while respecting their capacities for emerging autonomy and participation in decision-making will differ according to the maturity of children and the social, economic, cultural and political environment in which they live. However, there are common principles and practices that need to inform the process. Most importantly, it is necessary to proceed on the basis of respect for children, their dignity and entitlement to protection from all forms of violence, abuse, exploitation, neglect and harm, while also acknowledging the value of their own contribution towards their protection. Not only does participation strengthen their capacity to protect themselves, but they have a unique expertise to bring to protective processes.

In societies throughout the world, more could be

done to create environments in which children achieve their optimum capacities and greater respect is given to children's potential for participation in and responsibility for decision-making in their own lives – within the family, in school, in respect of their own health care, in courts, in local communities, and in political forums. Action is needed in law, policy and practice to promote cultural change in which the contributions that children make and the capacities they hold are acknowledged.

3.1 In the family

In many countries, there is an understandable resistance on the part of families to State interference in their role. Families are entitled to privacy and to respect for the choices they make in bringing up their children. However, as argued in Section 1, the autonomy of families is not unlimited. The State has a role to play in the introduction of legislation and structures that support families in respecting the rights of children to participate in decisions that affect their lives, according to their evolving capacities.

These laws play two roles. Firstly, they introduce age-limits that restrict the choice of parents to make specific decisions on behalf of children before they are competent – for example, minimum ages of marriage. Secondly, they introduce broader proactive obligations on parents to consult with and involve children in all decisions affecting them in accordance with their evolving capacities.

Considerable progress has been made in establishing age-limits to protect children. However, relatively few countries have introduced an explicit principle in law foreseeing that parents consult with children and take account of their views when making decisions affecting them.

Concerns have been raised that the introduction of legislation giving children rights to be heard, and limiting the disciplinary rights of parents, would result in conflicts within families and generate disrespect. Many such concerns fail to recognize that respect for children's wishes needs to take place in the context of the wishes and needs of others.²⁷² Some choices that a child wishes to make will impose obligations on others; for example, a child's wish to remain in education may impose serious financial obligations on the parents. Some choices will conflict with the exercise of rights by others; for example, an older child wishing to continue with his or her education may deny a younger child the right to access education at all. In both these cases, factors other than the competency of the child will necessarily determine how the decision is made. Children, like adults, need to understand that rights cannot be exercised without regard for others.

In practice, countries that have introduced provisions giving children a right to participate in family decision-making is an indication that children have not abused this entitlement. In Norway, where legislation has been in force since 1981 that gives children the right to participate in decisions affecting them, the outcome has been positive, as the following observation indicates: 'On a general level, it seems as if modern family life has been opened up for an empathetic discourse between children and parents. It is quite clear that the social control exercised in the past through an authoritarian, patriarchal relationship between parents and children in which subordination was upheld by sanctions and punishment, appears to be in dissolution... This also implies that the child starts considering itself as a person in its own right and demands to be understood and looked on in the same way'.²⁷³ Enabling children's right to participate enhances both children's capacities and mutual respect between parents and children.

Respect for children's evolving capacities within the family must also acknowledge the importance of the parent's role. Children do not operate in a vacuum. As Alderson's research showed, most children want a say in important issues affecting them and many want to be able to take decisions for themselves, but they want to do so in consultation with and supported by their families. Giving children opportunities to take responsibility for those decisions that they are capable of making does not remove parental responsibility. Rather, it involves both parents and children in recognising that decision-making is an interdependent process. Programmes in parenting might be developed, founded on concepts of mutual respect for rights within families and drawing on approaches to positive parenting from different cultures around the world.

Parents learn about their children's capabilities

A series of case studies from South Asia document participatory initiatives and provide convincing evidence that giving children responsibility strengthens rather than weakens family relationships.²⁷⁴ Evidence indicates that respect for children's views does not lead to lack of respect for parents. Indeed, many parents and children cited improved family relationships, greater respect for parents, and contributions to the local community as positive outcomes. Parents value children's increased confidence and skills, recognizing that participation opens up new opportunities for their children. For example, children participating in school-based Children's Clubs initiated efforts to improve school conditions and lobbied for community projects – in one case, the building of a bridge to shorten their route to school – and also raised awareness of issues of concern, including the need to stop and prevent domestic violence. In some cases, children felt that parental attitudes had changed, leading to less physical punishment, and that adults were less rigid and friendlier towards them as a result of the project.

Families need to be encouraged to recognise and respect the significant and unique capacities of children – including many capacities that adults lack – and the invaluable contributions of children to family life: energy, a sense of humour and fun, imagination, creativity, spontaneous expressions of love, mediation between arguing parents, a willingness to forgive, speed at learning new languages, information technology skills. Through these and many other ways, children lend their skills and knowledge to their families. The implication is that family relationships are based on inter-dependency of family members, and not merely on an assumption of children's dependency on adults.

It is also important for parents to understand and acknowledge the limitations of children's capacities at any given period in their lives, and not to impose inappropriate demands on them. Too often children are punished for failing to meet parental expectations of behaviour or understanding. Respect for evolving capacities involves respect not only for what children can do, but also what they cannot do. Children are entitled to be treated with dignity and respect irrespective of their age or levels of capacity. Children with learning disabilities, for example, do not forfeit their rights – and their right to respect – because of more limited intellectual capacities.

Actions to promote respect for children's evolving capacities in families might include:

- Promoting parent education and support that addresses:
 - > The right of children to participate in all decisions affecting them.
 - > The importance of recognising and respecting the extent of children's capacities.
 - > The right of children not to be burdened with inappropriate levels of expectation or responsibility.

- The equal rights of all children regardless of gender, racial, ethnic or religious identity, or disability.
- The right of children to exercise their rights in accordance with their evolving capacities.
- The role of parents in supporting children in making informed choices.
- The value to all family members of enabling children to take responsibility for those decisions they are capable of making, to participate in all decisions affecting them and have their views taken seriously.
- Recognition that overprotecting children can increase vulnerability, and giving children responsibilities and allowing them to test their own boundaries, which can be a most effective form of protection.
- The contribution that children make within families, the extent to which parents depend on children as well as children on parents, and the consequent need to respect family relationships as interdependent.
- Investing in models of early childhood education consistent with local cultures and contexts and committed to promoting well-being, belonging, contributing, communicating and exploring.
- Introducing legislation recognising the right of children within families to participate in all matters affecting them, in accordance with their evolving capacities.

3.2 In schools

Many schools throughout the world offer limited opportunities for children to learn through dialogue and participation. Too few provide recognition of children's contributions to their own learning or respect children's right to participate in decision-making within education in accordance with their evolving capacities. Respecting children's competencies to contribute to education at all levels is consistent with the philosophy of the Convention on the Rights of the Child and also benefits the learning experience. Teachers, like parents, tend to view children as passive recipients of adult wisdom and expertise, and worry that involving children in decision-making will reduce their own ability to exert control, diminish the respect they receive from children and produce bad behaviour. Yet, as with families, the evidence points to the contrary: Research from the UK, for example, demonstrates that when children feel respected and are involved in decisions affecting school life, the relationships between staff and students improve, as do educational outcomes, leading to less conflict and violence and greater commitment to education.²⁷⁵

Practice shows that children throughout school ages have the capacities to contribute towards:

- Designing the curriculum.
- Promoting effective teaching methods.
- Recruitment of staff.
- Developing school codes on behaviour, non-discrimination and non-violence.

Children participate in creating a positive school environment²⁷⁶

Highfield School is a junior school (7 to 11 years) in England that was characterised by high levels of violence, disaffection, bullying and truancy. A new head teacher was appointed who decided to involve the whole school community in making the school a safe and effective educational environment. In order to achieve this goal she consulted with all the children, as well as teachers and administrative staff, on what changes were needed to make the school a safer place. The outcomes of the consultation included:

- The establishment of a school council in which the children have genuine responsibility. They were involved, for example, in the development of school policies and in the recruitment of staff.
- 'Circle time' – a weekly session with all children in each class able to sit together and discuss current issues of concern to them.
- The creation of a bullying box where children can, in confidence, give information about having been bullied.
- The appointment of 'guardian angels' – children who volunteer to befriend children who are without friends, being bullied, or in need of support.
- Children trained as mediators who help resolve arguments on the playground.

As a result of these changes, the children are happier, achieve better educational results, and acquire considerable skills of negotiation, democratic decision-making and social responsibility.

This experience demonstrates that very young children are capable of accepting considerable levels of responsibility when invested with trust and support and can play a key part in protecting both themselves and others. The provision of training and encouragement for the child mediation system enables the children to help each other without having to turn to adults, although the adults are there when needed. When their own rights are respected, children are able to better understand the importance of respecting the rights of others.

- Organising and managing play times.
- Classroom design and décor.
- Peer education.
- Peer counselling and support.
- Developing education policy.
- Community sensitisation on the right to education.

The General Comment from the Committee on the Rights of the Child on the aims of education emphasises the unique role that children can play in reconciling differences that arise between groups of children in schools. The Comment states that 'children are capable of playing a unique role in bridging many of the differences that have historically separated groups of people from one another'.²⁷⁷

Actions to promote respect for children's evolving capacities in schools might include:

- Training teachers on the principles of the Convention and, in particular, the right of children to be respected for their evolving capacities and to participate in decisions affecting them.

A democratic school

Summerhill School, established in 1921 in the UK, promotes an innovative learning experience and a democratic environment for children. Children between 6 and 18 years are given democratic control over all aspects of school life. School policies are decided at a weekly school meeting in which staff and children have an equal vote, with children significantly outnumbering staff. The meetings establish school rules and also determine their enforcement. Classes are not compulsory: Children are responsible for making their own decisions about attendance. Although many children who arrive at Summerhill from more traditional schools tend to go through a period of non-attendance, ultimately they all participate in classes, and the scholastic achievement of children in the school is good.²⁷⁸ The school argues: 'Giving children freedom and power over their own lives promotes a feeling of self-respect and of responsibility to others. They learn from an early age that what they think is important and that others will listen to what they have to say – and that what others say and think is equally important, and should be listened to'.²⁷⁹

What is striking about Summerhill is the extent to which children develop in direct response to the responsibilities and expectations placed upon them. The school meetings, the vehicle of self-determination for the community, are the method of enacting the freedom its members enjoy. But the meetings have other effects on the children: The many visitors to the school invariably comment on the children's articulacy, their self-assurance, their general air of being in control of their own lives, as well as their degree of social responsibility, compared with their contemporaries at other schools.

Children shaping educational policy²⁸⁰

In Sweden, the department responsible for school policy wrote to secondary schools across the country, inviting children to take part in a three year consultative process on developing educational policy and priorities. The 200 children who agreed to participate were asked to write an initial letter setting out the issues they considered to be of primary concern in their schools. These letters were analysed to identify the dominant themes identified by the children. The children were then asked to write a letter each term over the next three years focusing, in turn, on these issues. The responses were brought together and used as the basis for future decision-making for schools policy across the country.

- Developing teaching methods that build on recognition that children are not passive recipients of adult guidance, but learn most effectively through problem solving under adult guidance or in collaboration with more capable peers. This necessitates recognition of children as active agents in their own learning.
- Supporting teachers seeking to introduce more democratic practice in schools.
- Creating opportunities for collaborative learning with teachers and peers to build confidence and capacity.
- Establishing a more comprehensive approach to the range of competencies promoted and assessed in schools in order to acknowledge the importance of, for example, social skills, exercising responsibility and democratic decision making, as well as cognitive skills.
- Developing learning opportunities within and relevant to children's own communities, rather than in isolation from other aspects of the child's life.
- Promoting children's participation in decision-making processes in schools through school councils and governing bodies, as well as through more open and collaborative processes. These rights need to be backed up by policies setting out the implications and framework for a more participatory approach.
- Consulting with children on their priorities for change within the education system.
- Sharing examples of practice where children are respected as partners within the school environment.
- Creating opportunities for children to develop networks through which they can share ideas, strengthen their capacities and organise for greater respect for children in schools.

3.3 In other institutions

Decisions affecting children's lives are taken within a wide range of institutions and by many different professionals. Many children come into contact with courts, hospitals, residential, penal and child care institutions where judges, police, magistrates, doctors, nurses, psychiatrists, child-care workers, social workers, youth workers and administrators can all exercise power over them. Too often that power is exercised without appropriate reference to children's capacities. The tendency is to underestimate the capabilities of children and, in so doing, there is a failure both to respect the rights of children and to capitalise on the expertise and perspectives children can contribute.

More consideration and respect is needed for children's evolving capacities, for example, with regard to:

- Acting as witnesses in court.
- Participating in day-to-day decisions about children's lives that are made by the courts, for example, decisions regarding custody and access when parents are divorcing, and decisions concerning adoption or placement of children in care.
- Consenting to medical treatment.

- Ensuring confidentiality in child protection and medical contexts.
- Developing child protection policies and processes.
- Participating in all aspects of policy that affect their day-to-day lives.
- Participating in policies, practices and decisions affecting daily living in care institutions.

In all these areas, more thought needs to be given to ways in which children can be supported through adult encouragement and access to information to participate in decisions that affect them.

Actions to promote respect for children's evolving capacities in institutional reform might include:

- Creating consistent and appropriate legal frame-

Influencing health services²⁸¹

Designing a hospital

A new children's hospital was planned in Derby in the UK. The architects had a budget of £12million and an empty field in which to build the hospital. They decided it was important to ask children what they wanted from their hospital, so they involved 130 children aged 6 to 16 in group discussions and workshops to find out what they liked and disliked about going to hospital and how their experiences could inform the design. The input from children gave the architects insights into the type of building the children wanted and how it could better serve their needs. One of the architects commented: "This sort of exercise makes our job a lot easier... Now we know what they want... This is their building." Many of the features of the new hospital arose from the suggestions of the children, including a reception area where children can check in by themselves.

Improving hospital care

A hospital project in Newcastle, in the UK, involved children in identifying issues of concern and improving future services through questionnaires, suggestion boxes and a children's forum. The children's concerns included poor food, uncomfortable rubber mattresses, the theatre gowns with an open back that made them feel vulnerable and exposed, noise on the wards at night and the general boredom of being in a hospital. They wanted larger lockers, duvets rather than blankets, softer towels and more choice of videos. In response, the hospital has introduced a new food trolley, redesigned the theatre gowns, bought new mattresses, and conducted a survey on the most popular videos. Children feel that as a result of their active participation and the commitment to addressing their concerns, they can now talk more easily to the nurses and hospital staff, and feel happier about being in hospital. The critical factor was the attitude of the nurses who introduced the project, respected children's views and experience, and recognised their capacity to contribute towards making the hospital a better place to be.

works to provide protection from harm that differentiate between the need for universal standards of protection and participatory rights, consistent with evolving capacity, developed on the basis of the principles outlined above.

- Developing and disseminating principles, tools and codes of practice for assessing and respecting children's competence to be involved in key decisions affecting their lives, based on available evidence from recent research.
- Providing appropriate information to children that will enable them to make informed choices with respect to individual decision-making, as well as in terms of broader public policy.
- Training professionals on the Convention on the Rights of the Child and children's right to respect to further develop their evolving capacities, as well as the need to balance the right to protection with the right to participate in decision-making.
- Consulting with children of all ages in order to identify the challenges to respecting their evolving capacities, to draw on their experiences on how to promote greater respect for children's agency, and to formulate the nature of legal protection needed.
- Conducting research with children in order that their life experiences, views, and levels of competence and agency can inform all relevant policy making.
- Involving children in the development, implementation, monitoring and evaluation of policies, strategies and programmes for all aspects of protection.
- Developing models that provide opportunities for children to play a key role in their own protection, in order to enhance their resilience, self-esteem, self-efficacy and self-confidence.
- Recognizing the role children can play in their own protection and also in the protection of other children.

3.4 In local and national political processes

There is concern in many Western countries that young people lack interest in democracy, but there is no parallel recognition of the potential benefits of offering them the right to formal expression of their political views. Currently, Bosnia and Herzegovina, Brazil, Croatia, Cuba, Nicaragua, Philippines, Serbia and Montenegro and Slovenia have a voting age of 16 years. Iran has a voting age of 15 years and, in one German state, children of 16 and 17 years can vote in municipal elections.²⁸² In the rest of the world, children under 18 years are denied the right to vote. Yet children are expected to carry significant responsibilities: some are working and paying taxes, others are members of the armed forces, married, have responsibility for children, are caring for other family members or studying.

Evidence suggests that children and young people want opportunities for greater involvement. A series of consultations that took place with children in the

UK indicate that there is considerable interest among young people in greater opportunities for political participation.²⁸³ In a survey conducted with children across member States of the European Union, children expressed a powerful desire for more political recognition.²⁸⁴ And in research carried out in 1997 in Austria, 800 13- to 17-year-olds were asked whether they wanted access to political information and participation. Of these, 93 per cent indicated that they wanted to be informed when new projects were planned in their municipality, and 65 per cent wanted youth consulting hours with politicians.²⁸⁵ Lowering the voting age – for example, to 16 years – would increase respect for and interest in the views and concerns of young people, and provide them with political rights consistent with many of the responsibilities they are expected to carry.

In addition to formal representation, action is needed to promote greater respect for the capacities of children of all ages to express their views on policies and services that impact their lives, at both local and national levels. Despite some progress in the creation of consultative mechanisms by local and national governments in a number of countries, children continue to be viewed variously as recipients, dependents, victims, perpetrators, trouble-makers or drop-outs. Rarely are they dignified as active, competent participants in the public arena. Yet children have an invaluable contribution to make. It is in the interests of children and governments to promote a culture of greater respect for children and their potential contribution.

The opportunity to participate is a vital element in promoting children's capacities, self-esteem and confi-

dence. All levels of government also have obligations to work towards providing the necessary resources with which to guarantee the other components essential to children's well being and optimal development: adequate housing and standards of living, opportunities for play and education, access to health care and protection from exploitation and abuse.

Actions to promote respect for children's evolving capacities in government might include:

- Promoting government commitment in all legislation, policy and services to respect children as active subjects of rights, rather than passive recipients of care. Recognising the validity and relevance of children's experiences and views in contributing to governmental processes.
- Developing policies that address the equal rights of all children to achieve their optimum potential and recognize the need for proactive steps to fulfil that goal for marginalised and disadvantaged children – including girls, children in institutions, children with disabilities, poor children, and children from indigenous and minority communities.
- Giving consideration to the right of young people under 18 years to take part in formal political processes.
- Building institutional structures through which children can be consulted in all legislation and policy impacting their lives. This process needs to introduce mechanisms appropriate to the different capacities among children and involve children of all ages and abilities.
- Maximizing resources available to invest in children's optimum development through governmental commitment to implement Article 4 of the Convention on the Rights of the Child.

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