


The Rights of Child Human Rights Defenders

Implementation Guide




Children need to be given spaces to work together because there is power in having many more children defending human rights.

The impact may be big or small but we all fight for what we believe in!



I believe we are all human rights defenders in our own way.



Schools should talk about human rights, teach students how to act or what to do to protect them!



Children are Human Rights Defenders!



About Child Rights Connect

[Child Rights Connect](#) is an independent, non-profit organization founded in 1983 as the Ad Hoc Group for the drafting of the Convention on the Rights of the Child. Once the Convention was adopted, the network became the key strategic partner, with UNICEF, of the Committee on the Rights of the Child. Child Rights Connect is now one of the largest international child rights networks. Through its more than 90 member organizations, it has a worldwide reach with members from all regions reaching millions of children in around 185 countries. Through Child Rights Connect, children's rights defenders, including children, can speak with one global voice in front of the international community and have a stronger influence on political decisions.

The rights of child human rights defenders: Implementation Guide



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CHILDREN'S
RIGHTS

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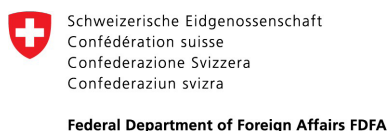
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Abbreviations

CHRD	Child Human Rights Defender
CRC	Convention on the Rights of the Child
CRIA	Children's Rights Impact Assessment
CRPD	Convention on the Rights of Persons with Disabilities
HRD	Human Rights Defender
ICCPR	International Covenant on Civil and Political Rights
NHRI	National Human Rights Institution
OHCHR	Office of the High Commissioner for Human Rights
OPIC	Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure
OSCE/ODIHR	Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe
SRSG VAC	Special Representative of the Secretary-General on Violence against Children
SRSG CAAC	Special Representative of the Secretary-General for Children and Armed Conflict
The Committee	Committee on the Rights of the Child
The Declaration or DHRD	The United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms
The Special Rapporteur	Special Rapporteur on the situation of human rights defenders
UN	United Nations

Preface

In September 2018, the Committee on the Rights of the Child held its Day of General Discussion on 'Protecting and empowering children as human rights defenders', which took place at the Palais de Nations in Geneva. That year coincided with the 20th anniversary of the United Nations Declaration on Human Rights Defenders. Until that date, practically no records had been found that included children in that category.

For the preparation of the Day of General Discussion, we worked in an articulated way with the Special Rapporteur on the situation of Human Rights Defenders, Mr. Michel Forst, Child Rights Connect, and children from different regions of the world prepared to participate in this event. It was the first time that we heard of child human rights defenders. Since then, children who fight for their rights have been – for the Committee – child human rights defenders. Thus, this repaired a historical oversight in which people under 18 years of age who defended and promoted human rights were not considered human rights defenders and, therefore, did not receive the protection that this designation demands.

The Day of General Discussion and the actions undertaken afterwards were characterized by collaborations between different actors, such as United Nations agencies, non-governmental organizations, academics, children and even the Rapporteurship on the Rights of the Child of the Inter-American Commission for Human Rights. This unusual fact - even in times when there is much talk of coordination - is an indicator of the attention that the subject attracts.

This guide that collects the reflections and is the result of a collective process of a plurality of actors is a fundamental contribution for the times ahead. In it, you will find tips and guidelines to advance the protection and promotion of child human rights defenders.

In different regions of the world, children mobilize actively and with dedication to the problems of our time, from mobilizations against authoritarian governments that curtail rights and freedoms, to drawing attention to the

climate emergency that adults are causing and that already impact children's lives. Therefore, we must be attentive and prepared so that the answers that we give to their demands meet their expectations.

The energy, creativity, joy and commitment that child human rights defenders show in their struggle urgently require actions that recognize them as such and that create conditions so that when they undertake activities as human rights defenders they are empowered and protected in carrying out that role. They are protagonists in the fight for their rights and we – adults and institutions – must respect them, accompany them and empower them.

A handwritten signature in black ink, appearing to read 'Luis Pedernera', with a stylized, overlapping flourish at the end.

Luis Pedernera

Chairperson

Committee on the Rights of the Child

Foreword

The first human rights defender I ever came across was a little boy called Iqbal Masih, who made an enormous impression on me. He was sold into bonded labour to a carpet factory. Small fingers were needed to weave carpets and his parents owed the equivalent of 6 USD to the owner. Iqbal escaped when he was 10, after he heard bonded labour had been declared illegal by the Supreme Court in Pakistan. He was helped by an organization that worked against bonded labour, and he went to school and became an advocate for slave children, telling his own story and recounting the cruelty he and other children suffered. He started to get death threats from people connected to the Pakistani carpet industry, and when he was 12 he was shot dead. In his short life, he helped free 3,000 other children.

There is no doubt that children who are human rights defenders (“child human rights defenders”), like Iqbal, deserve greater recognition by all, States, the international community, civil society, adult defenders, as well as by their families. As long as a child, boy or girl alike, peacefully protects and promotes universally recognized human rights and fundamental freedoms he or she is a human rights defender. It’s time for child human rights defenders to move from the margins of that work to the centre, and for there to be no doubt that their work is - and has been for many years - central to the struggle for human rights.

Working with child human rights defenders might be a newer area of work for some of us. For others, children who are human rights defenders might have received only marginal attention by our organizations, institutions or movements, often from an adult perspective.

This Implementation Guide on “The rights of child human rights defenders” developed by Child Rights Connect is an important tool with the potential to help the national implementation of the UN Declaration on Defenders in harmony with the UN Convention on the Rights of the Child. This needs to be done in collaboration with children themselves.

The Guide also gives clear guidance to States, civil society and UN mechanisms

like mine on how to better recognize, protect and empower child human rights defenders, and how to enable them carrying their human rights work safely. Children themselves will also be able to use the child friendly version of the Guide to better understand their human rights as defenders and to defend the human rights of others, with all relevant authorities and actors.

The Guide will help us all, including my mandate, to increase our engagement with child human rights defenders and to better support their work. As the Special Rapporteur on the situation of human rights defenders, I am committed to focus on the cases of children who are at risk for their human rights work on behalf of others.

A handwritten signature in black ink that reads "Mary Lawlor". The script is cursive and fluid, with the first letters of each word being capitalized and prominent.

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

1. Introduction

“Children are already acting as human rights defenders. It is just that adults did not pay attention to their activities, their experiences, their roles, contributions, voices, needs, and challenges”

Mikiko Otani, Member of the UN Committee on the Rights of the Child¹

Children are human rights holders, human rights claimants and human rights defenders (HRDs); children in every country and in every region are standing up for children’s rights and human rights in general. Children who act as HRDs are shaping understanding of human rights across the world. Recognizing this contribution and the unique challenges that children may encounter, the Committee on the Rights of the Child’s (the Committee) Day of General Discussion in 2018 (DGD2018) was focused on protecting the rights of child human rights defenders (CHRDs).² DGD2018, and the global consultation with children which informed it,³ provided insights into the many ways in which children are acting in the defence of human rights right across the world, challenging existing norms and practices and insisting on being heard. It also identified many of the distinctive barriers that children encounter when acting as HRDs. A picture emerged of an array of challenges that include: not having access to information, including about their rights; not being taken seriously by adults; receiving physical and verbal abuse and threats online and offline; being prevented from acting by their families, elders, schools or the police; and not having access to or information about effective supports or remedies. While some of these issues are encountered by adult HRDs, children have a distinctive set of human rights entitlements, most notably within the Convention on the Rights of the Child (CRC)⁴ and its Optional Protocols⁵, many of which are relevant or directly engaged when they act as HRDs.

The United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms – frequently abbreviated to Declaration on Human Rights Defenders (the Declaration or DHRD)⁶ – and its associated commentary⁷ apply to ‘everyone’ including children. The

Declaration does not create new rights but instead articulates existing rights in international law in a way that makes it easier to apply them to the practical role and situation of HRDs. The CRC, along with bespoke provisions for children in other instruments such as the Convention on the Rights of Persons with Disabilities (CRPD)⁸, are therefore essential for the translation of the Declaration into national laws, policies and practices that are appropriate and effective for children. Similarly, the Declaration and the legal framework that it brings about is a unique tool that can enhance the implementation of the CRC at the national level, particularly in relation to CHRDs' right to be heard and civil and political rights. While there have been preliminary attempts to include children's rights in legal frameworks for the protection and empowerment of HRDs at the national level, major gaps persist within HRDs' frameworks and beyond.

This Implementation Guide aims to complement the existing commentary and advice on HRDs by articulating the rights of CHRDs and identifying **what is distinctive about children's rights**. It provides guidance as to what States and others should do to ensure that children who exercise their right to defend human rights are not only allowed but empowered to do so and can do it without encountering breaches of their own rights and without unnecessary or disproportionate restrictions. It does so by drawing on the recommendations of DGD2018⁹ and children's own experiences and views of what enables them to act as HRDs (which are represented in the quotations from children).¹⁰ The Guide has been informed throughout by the input of an international experts' advisory group.¹¹ A child-friendly version of this Guide is currently being developed by the Children's Advisory Team of Child Rights Connect.

What is different about CHRDs?

Children, as human beings, enjoy the human rights, including the civil and political rights that adults do. Moreover, the CRC creates a bespoke version of these that recognizes the distinct challenges and opportunities that children may encounter in the enjoyment of their human rights and the distinct context in which they exercise their rights. These are as follows:

- There is an **on-going resistance to the idea that children can or should have rights** independently from the adults who care for them and resistance to the idea that children can or should defend human rights and speak up against adults' authority.
- There is a **generalized scepticism about children's perceived capacity and ability** to understand and claim human rights.
- CHRDs **may not recognize themselves as human rights defenders or may not have sufficient knowledge of their rights to know that they can be HRDs.**
- In order to mitigate children's lack of influence in decision-making, the CRC contains a number of provisions designed to empower children, **including rights unique to children (Article 12, CRC (adapted in Article 7, CRPD)) to have their views sought and given due weight.**
- Children have **enhanced protections from abuse and harm** in recognition of the fact that they may be physically weaker, more dependent, less mature, less powerful and more vulnerable to abuse, ill-treatment and torture.
- CHRDs **may not fully understand the risks that they may encounter** including those that put them in danger and should be given opportunities to learn about risks and ways of protecting themselves as HRDs.
- **CHRDs may experience stigmatization and resistance, including violence, when defending human rights, just because they are children** and perceived by some to be breaking social and cultural traditions that expect them to be passive and to leave advocacy to adults. Adverse reactions can be exacerbated because of the child's gender, disability, race, language, religion, ethnic and social origin.
- CHRDs may be the **deliberate targets of violence to deter other CHRDs or HRDs.**
- **Parents/guardians are also both rights holders and duty-bearers in the CRC** and their rights in relation to their children (e.g. to advise and guide in line with the child's evolving capacities) must also be respected.
- CHRDs have grown up in a world where the digital and non-digital co-exist and may **use the digital environment more extensively and/or in**

different ways than adults, which may be uncomfortable to adults.

- **The digital environment provides an opportunity to seek, receive and impart information in the public domain in ways that might not otherwise be available to children** but CHRDs may also experience distinctive risks and challenges in terms of access and safety when they are using it.
- Most children who act as **CHRDs are of school age and schools provide a unique context for children's defence of human rights**. Schools can provide an opportunity to promote children's understanding of rights; act as a barrier to engaging as a CHRD; and, in some instances, constitute the focus of the human rights breach, claim and defence.
- The implementation of CHRDs' rights face **additional challenges because of children's status in society, lack of political power, lack of voting rights and dependence on adults**.
- Children may **not be aware of or have access to mechanisms for participation, support, accountability and/or redress**.

Thus, while children, on the face of it, enjoy the same or bespoke expansions of the human rights enjoyed by other HRDs, these rights are exercised within a distinctive social context. One of the consequences of this is that States and others (including parents and schools) may overlook the fact that children are HRDs or restrict their engagement as a result of prevailing social norms. Moreover, children themselves may not see themselves as HRDs or may grow up in social contexts where they do not know that acting as HRDs is an option, never mind an entitlement, for them. This is particularly true for girls, children with disabilities and children in vulnerable situations.

The Declaration must be read, understood and implemented in the light of:

- (a) a bespoke set of children's human rights;
- (b) a unique context for the exercise of those rights (i.e. within the context of their on-going development, their relationship with their families and their position in their schools and their communities) and;

(c) a recognition of the distinctive challenges around implementation of a human rights-based framework for children.

It also needs to be understood in the light of the lived experiences of, and with input from, CHRDs.

This implementation guide:

- Clarifies the definition of 'child human rights defenders'.
- Analyses the Articles of the CRC that are most relevant to CHRDs with reference to the Declaration, drawing on the lived experiences of CHRDs.
- Provides guidance on how a human rights framework for CHRDs should be implemented.

At the outset, it must be noted that the CRC is an articulation of established human rights protections for children, such as those in the International Covenant on Civil and Political Rights (ICCPR) and other international human rights treaties, and does not and cannot detract from these or enhanced protections in domestic law. Article 41 of the CRC states that 'nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in domestic law or international law in force for that State.'

2. Definitions (Art. 1 CRC and Art. 1 DHRD)

2.1 Definition of a Child

CRC



Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 1 of the CRC ‘simply and solely defines who a child is for the purposes of the Convention and thus determines who is entitled to the rights listed elsewhere in it.’¹² Those under the age of 18 do not always use the terms ‘child’ or ‘children’ to describe themselves (e.g. it would be rare for a 16 year old to refer to themselves as a ‘child’), but the protections apply nonetheless.

The CRC adopts the age of 18 as a pragmatic endpoint for childhood, while acknowledging that, in some contexts, the age of majority is obtained earlier. Moreover, even in national contexts where majority is obtained earlier, the Committee urges States to review legislation to ensure that children enjoy the protections of the CRC up to the age of 18.¹³ The African Charter on the Rights and Welfare of the Child states that ‘a child means every human being below the age of 18 years’¹⁴, and so it does not limit its protections in States where majority is attained earlier.

2.2 Definition of a CHRD

DHRD



Article 1

Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.

The Declaration does not contain a definition of a HRD, although Article 1 sets out the scope of the activity that is covered. It also extends to ‘everyone’,

making clear that there is no minimum age to act for the protection, promotion and fulfilment of human rights. Children across the world are acting as HRDs, although they do not always use the term to describe themselves and are not always seen or described as HRDs by adults. Part of this is connected to children's understanding of what a HRD is and does. This is often based on adult assumptions and language with the result that some human rights activities are classified as forms of 'civic engagement' or terms such as 'child' activist (as opposed to 'human rights' activist) or activities such as child/youth empowerment are used in preference. Children should be free to choose what to call themselves. However, irrespective of that, they should enjoy their human rights both as children and as HRDs.

I imagine human rights defenders as a very intense role, marching/ protesting, working at the United Nations. However, when you think about it, in the small things you can also defend human rights, and then you realize you are one [a defender] indeed.

Latin America and the Caribbean

The Office of the High Commissioner for Human Rights (OHCHR) defines HRDs as those who 'individually or with others, act to promote or protect human rights.'¹⁵

Building on DGD2018, the Guide uses the following applied definition of CHRDs:

'Children who take actions to promote, protect and fulfil human rights, including children's rights, are human rights defenders, even if they do not see themselves as such, or are not considered and called as such by others.'¹⁶

This applied definition addresses (a) the misconception that CHRDs only work on children's rights and (b) the reality that many CHRDs do not use the term and/or there is adult resistance to acknowledging that children can be CHRDs.

CHRDs act on a wide range of human rights issues. Some of these are connected

to their own rights and those of other children (i.e. children claiming their right to education can have important consequences for their own rights and the rights of other children) and some are focused on human rights affecting everyone (such as environmental rights and poverty).

The OHCHR states that HRDs are identified ‘above all by what they do’ and it is through a description of their actions that the term can best be explained. The actions that are identified as examples of human rights activity are as follows: local, national, regional and international action; collecting and disseminating information on violations; supporting victims of human rights violations; action to secure accountability and to end impunity; supporting better governance and government policy; contributing to the implementation of human rights treaties; human rights education and training.¹⁷



Examples of CHRDs are:

- A child, member of a Children’s Parliament, who conducts advocacy work to make sure that his/her government respects its international human rights obligations;
- A child who raises awareness of children’s rights among his/her peers;
- A child who seeks justice for the violation of his/her own rights to promote reforms in the public interest;
- A child who participates in a peaceful assembly to protest against injustices and stand up for human rights;
- A child who monitors the implementation of the CRC and submits an alternative report to the Committee.

While there are children all over the world who will fit within the above definition of a CHRd, the reality for most children is different: not only will they not know about human rights and/or what that means/implies but they live in societies where speaking out is unacceptable generally, let alone speaking

up for human rights. In many societies and contexts, it is inconceivable to children that they should speak up against adults' authority. The challenges can be further compounded in authoritarian regimes – adding political barriers to social and cultural ones. In spite of this reality, the human rights obligations of States remain and the guidance that follows is for all States, albeit acknowledging the very different social, political and economic contexts in which the rights of CHRDs, actual or prospective, must be realized.

3. The Convention on the Rights of the Child and the Declaration on Human Rights Defenders: Rights Relevant to CHRDs

3.1 The Four General Principles (Art. 2, 3(1), 6, 12 CRC and Art. 8, 12, 16 DHRD)

The Committee has identified four of the Convention's Articles as 'general principles.'¹⁸ They are:

- Article 2: Non-discrimination
- Article 3(1): Best interests of the child as a primary consideration
- Article 6: Life, survival and development
- Article 12: Child's right to have their views given due weight.

All four are recognized as having crosscutting application - meaning that they are engaged across all other CRC rights. Taken together with Article 5 (parents' right and duty to provide guidance on the exercise of the child's rights in line with the child's evolving capacities), they have been identified to be the core of a 'child-rights approach.'¹⁹ **A child rights approach distinguishes the realization of the rights of CHRDs from adult HRDs:** in all instances, children must not only be protected from discrimination, their best interests must be a primary consideration; their views must be sought and given due weight; their right to life, survival and development must be protected; and their parents/guardians are required and entitled to give them guidance on the exercise of their rights.

3.1.1. Non-Discrimination

CRC



Article 2

(1) States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's

or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

(2) States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

DHRD



Article 12(2)

The States shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.

Many of the issues on which CHRDs focus their activities link directly to claims of discrimination. It is also imperative that children are not themselves discriminated against when they act to defend the right to equal treatment (or any other rights) for themselves or others. Article 2(1) is not a standalone (it is a right not to be discriminated against in the exercise of other rights), but it is an immediate entitlement and not subject to progressive realization.

They are not guaranteed when your gender is not respected, when your appearance / manner is different/ you become a joke. They are not guaranteed when being what you are becomes wrong.

Latin America and the Caribbean

Children report many instances of the types of discrimination prohibited by Article 2 when they exercise their rights as HRDs.

Children should enjoy equal opportunities to act as HRDs. They should not experience unjustifiable differences in treatment whether that is compared to adults, among children and/or towards themselves as HRDs. However, there are some groups of children who may experience particular and intersecting forms of discrimination when they act as HRDs. While Article 2 provides children with protection from discrimination in the exercise of their rights in the CRC, children also enjoy other protections from discrimination, for example on the basis of their gender or race or the fact that they have a disability, as provided by the CRPD, as well as the Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Elimination of All Forms of Racial Discrimination. Discrimination regularly impacts on girls, including those who are pregnant or parents, children with disabilities, those from diverse ethnic backgrounds, children who are refugees or stateless and those who are gender non-conforming or who identify as LGBTQI+, and many others. While similar challenges have been identified for adult HRDs in the same position, **children experience a multiple and intersecting disadvantage when they act as HRDs, their childhood itself compounding the discrimination they may face for other reasons** (which may also be on multiple grounds). For example, the multiple challenges facing women HRDs have been extensively documented and can be compounded for girls, manifesting themselves to different degrees or in different forms at different ages. Older children may face discrimination due to limits on their decision-making power as children as well as the discrimination more commonly associated with adults like gender-based violence and barriers to accessing sexual and reproductive health and rights and services. A girl from an indigenous community, or with a disability for example might experience discrimination based on her ethnicity, age, gender and ability status.²⁰ The same is true for children from indigenous communities who may experience challenges acting as HRDs because they use a minority language, or because of the discrimination and inequality they face generally, and this may be compounded by their age.

Children with disabilities enjoy a specific protection under Article 7 of the

CRPD which states that they should enjoy all human rights and fundamental freedoms 'on an equal basis with other children.' This is not limited to the rights within the CRC or CRPD.²¹ Processes should take into consideration empowerment and support for children with disabilities as well as accessibility and reasonable accommodation (Article 2 of CRPD) to remove barriers to participation.

Sexual orientation and gender identity are not mentioned explicitly in Article 2(1) of CRC but the Committee has stated that: 'States should also take effective action to protect all lesbian, gay, bisexual, transgender and intersex adolescents from all forms of violence, discrimination or bullying by raising public awareness and implementing safety and support measures.'²²

Article 2 does not specifically cover age as one of the protected categories. However, children are in many instances subject to restrictions that do not apply to adults and many of these (such as curfews or laws on anti-social behaviour) can impact adversely on CHRDs' ability to form relationships and use public space.²³



Status offences and age discrimination

The Child Rights Information Network has published a report on the use of status offences globally. Status offences criminalise actions for only certain groups of people, most commonly because of their religion, sexuality or age. Curfews, truancy laws and vagrancy offences can penalise children just for being in public, while 'disobedience' laws can transform activities that would be perfectly lawful for an adult into a criminal offence. The report gives useful guidance on the use of these offences and calls for their repeal on the basis that they breach children's human rights, including their right not to be discriminated against on the basis of their age.

https://archive.crin.org/sites/default/files/crin_status_offences_global_report_0.pdf

CHRDs also report experiencing stigmatization and abuse as a direct result of their activities, sometimes just because they are children:

Then someone else came out of the City Hall, started yelling and asking, "How old are you? Is this normal for minors to ask/request anything from the authorities?"

Eastern Europe

There are people who call us criminals or troublemakers for fighting for important issues that benefit society.

Latin America and the Caribbean

Read alongside Article 12 of the Declaration, children should not be discriminated against as a consequence of exercising their right to act as HRDs. One way to achieve this is to include 'age' as a protected category in legislation protecting HRDs. The proposed Model Law for the Recognition and Protection of Human Rights Defenders includes reference to age:



The Model Law for the Recognition and Protection of HRDs²⁴

'This Law applies to all human rights defenders under the jurisdiction, territory, or control of [country's name] without distinction of any kind, such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth, disability, sexual orientation, gender identity, sex characteristics or other status.'

<https://www.ishr.ch/news/model-law>

One aspect of Article 2 of the CRC that is unique in human rights instruments relates to children whose parents act as HRDs. **Children may be targeted**

specifically as a way of deterring their parents from acting as HRDs.

Article 2(2) requires States to ensure that the child is protected against all forms of discrimination or punishment on the basis of the activities, opinions, or beliefs of the child's parents, legal guardians, or family members. Thus, children, who may or may not be acting as HRDs alongside their parents, are entitled to protection from discrimination based on the beliefs, activities and opinions of their parents and guardians. This protection is a standalone provision.

3.1.2. Best Interests of the Child

CRC



CRC Article 3(1)

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

Article 3(1) is unique to children in international human rights law: along with Article 12, it has been suggested that it 'requires the adult world to continually re-appraise its activities by reflecting on how they might be felt by children.'²⁵ It applies each time a decision is made for a child or children and each time a decision is made that could impact on children and exists partly in recognition of the fact that children often lack power, including political power, in the decisions affecting them individually and as a group. It is significant for CHRDs as it provides them with a **platform on which to insist that governments and others include a specific focus on children in their actions concerning children**. On the other hand, the best interests principle may **also be used/ misused by adults (such as parents, teachers, police officers) to restrict what an individual CHRD may or may not do** (e.g. getting or sharing information, speaking publicly, taking part in a group, campaign or protest), making it important that those who are making such decisions do so with a full understanding of what elements are included in 'best interests' and how this principle should be applied.

The Committee has described Article 3(1) as 'a substantive right, an

interpretative legal principle and a rule of procedure.²⁶ It has also provided detailed guidance on what should be taken into consideration in determining what is in a child's best interests. These include: the child's own views; their other human rights; the views of parents and others; social and cultural considerations; and available empirical evidence.²⁷ Crucially for CHRDs, **'best interests' cannot be equated only with 'welfare' or protection from harm.** That is an important aspect of a child's best interests but it is not the only one: their civil and political rights (to have views given due weight, freedom of expression, including the right to seek, receive and impart information), association and privacy must also be factored into any consideration. This is important always but especially important for CHRDs as the best interests principle is sometimes used to justify laws, policies and decisions that unduly restrict children's exercise of their other rights on the basis that their activity may, for example, put them in danger or may have an adverse impact on their education. Those are important considerations in determining what is in a child's best interests, but they are not the only ones.

3.1.3. Right to Life, Survival and Development

CRC



CRC Article 6

(1) States Parties recognize that every child has the inherent right to life.

(2) States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 6 extends the widely recognized right to life to include, uniquely for children, an accompanying right to survival and development. Article 12(2) of the Declaration contributes to the interpretation of this for CHRDs in its emphasis on the protection 'of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.'²⁸

The Human Rights Committee has said that: ‘The duty to protect the right to life requires States to take special measures of protection towards persons in situation of vulnerability whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence. These include HRDs, officials fighting corruption and organized crime, humanitarian workers, journalists, prominent public figures, witnesses to crime, and victims of domestic and gender-based violence and human trafficking. **They may also include children, especially children in street situations, unaccompanied migrant children and children in situations of armed conflict.**²⁹ The Committee on the Rights of the Child has also interpreted ‘development’ holistically, embracing not only physical and intellectual but also moral and social development.³⁰ On this definition, it will include the child’s capacity to understand and claim human rights.

Clearly, States themselves are under an obligation to respect the right to life and must not endanger, hurt or kill children in their responses to the activity of CHRDs. They must also do everything that is reasonable to protect children from the life-threatening actions or omissions of non-States actors.³¹ This could, for example, require States to take reasonable preventive measures to protect children from threats to their life, including in the online environment.³²

Children may also require additional protection when, for example, protests that might become violent are being policed. The responsibility to protect children during peaceful protests cannot fall entirely on parents.³³ The Special Rapporteur on the situation of human rights defenders (the Special Rapporteur) has said that it is unacceptable that ‘a peaceful assembly that is threatened with violence should be prohibited rather than be assured of protection in accordance with States’ responsibility.’³⁴ Applying this to CHRDs, **the default response to a concern that a peaceful protest may become violent should not be to stop children participating but to do everything that is reasonable to remove the threat to children’s life, survival or development** (see further section 3.5.3).

Finally, it must be recognized that States can only do what is reasonable and that children ‘may still take actions or make omissions which compromise

their own enjoyment of these rights' despite the State's best efforts to ensure their life, survival and development.³⁵

3.1.4. Right to Have Views Given Due Weight

CRC



CRC Article 12

(1) 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.

(2) For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 12 is a unique right, requiring those making decisions about children to seek their views and give them due weight in accordance with their age and maturity. It is of utmost significance to the activity of CHRDs as it 'addresses the legal and social status of children, who, on the one hand lack the full autonomy of adults but, on the other, are subjects of rights.'³⁶ Article 12(1) covers all matters affecting the child while Article 12(2) applies specifically to judicial and administrative proceedings affecting the child; children who are challenging breaches of their human rights in courts and tribunals must be given the opportunity to have their views heard and taken into account. Article 12(2) is explored further at section 4.

The child's right to be heard under Article 12 (1) is a right of individual children and a right of groups of children.³⁷ It will apply to individual CHRDs when they are asserting their own rights in a context where a decision is being made about them (e.g. where they are challenging decisions about their own education or care). Article 12(1) also applies when CHRDs are affected as a group or working

in a group. The obligation to ‘assure’ means that governments should actively create opportunities for children’s views to be sought on issues affecting them, including in relation to law and policy.

Article 12 has clear links to, and is strengthened by Article 8 of the Declaration:

DHRD



DHRD Article 8

(1) Everyone has the right, individually and in association with others, to have effective access, on a non- discriminatory basis, to participation in the government of his or her country and in the conduct of public affairs.

(2) This includes, inter alia, the right, individually and in association with others, to submit to governmental bodies and agencies and organizations concerned with public affairs criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.

One of the factors that distinguishes children’s enjoyment of Article 8 of the Declaration is that children generally cannot participate in government in the ways that adults do, through voting in or standing as a representative in a local election. The Committee has encouraged States to lower the voting age so that children may be heard in democratic political processes.³⁸ However, no matter the minimum age for voting, governments should create opportunities for involvement of all children in public decision-making such as local, regional and national child and youth parliaments, summits etc., and should proactively consult children when making policy, using accessible material and methods. One of the recommendations in DGD2018 is that: ‘States should ensure that Children’s Parliaments and any other mechanism for child participation are provided with a clear and meaningful mandate and adequate human, technical and financial resources and are accessible to,

and inclusive of all, children without discrimination.’³⁹

Article 12 applies to all children and efforts must be made to ensure that groups of children who are often marginalized, silenced and ignored are included. DGD2018 recommended that: ‘States should ensure that child human rights defenders in vulnerable situations, including children with disabilities, children in humanitarian situations, children in alternative care, children living in poverty and minority and indigenous children are also able to freely express their opinion and be provided with gender and age-appropriate support to facilitate their active participation in all matters concerning them.’⁴⁰ The Special Rapporteur on internally displaced persons has emphasized the significance of this for the realization of the other human rights of children who are marginalized, observing that: ‘their participation helps them to regain control over their own lives, contributes to their rehabilitation, develops their organizational skills and strengthens their sense of unity.’⁴¹

In all cases, whether individual or collective, and across all decisions, there is an obligation to give children’s views ‘due weight’ in accordance with age and maturity. This is separate from parents’/ guardians’ right to provide guidance to the child in the exercise of their rights in line with the child’s evolving capacity under Article 5 of the CRC. While it has been suggested that the phrase ‘due weight’ in accordance with ‘age and maturity’ within Article 12 detracts from children’s right to freedom of expression, this is a misreading. An empowering interpretation acknowledges that this is an additional obligation on States, who should consider and take children’s views seriously when they are on a matter affecting the child. This right exists as an acknowledgment that children are less likely to be in a position to influence these decisions and that the ability to impact decisions made about oneself is at the heart of a human rights-based approach – underscoring dignity, equality and respect for the worth of the individual human. **Children’s right to be involved in public decision-making demands a distinctive and additional response from States in recognition of the disadvantage:** States are under a specific obligation to both seek the views of CHRDs and take them seriously (by giving them due weight in accordance with age and maturity). States are also required to ensure that children with disabilities enjoy the right to be heard on an ‘equal basis

with other children’ and receive ‘disability and age-appropriate assistance’ to realize their rights (Article 7(3), CRPD).

Even when children’s views are sought, CHRDs report that they are not taken seriously. Many children identified that the primary barrier to the realization of their right to be heard was the negative attitude of adults.

The society we’re living in mocks us when we try to raise our voice about a certain issue, treat us as people who’re unable to take responsibility and not as people who’re able to think seriously on these matters.

Asia -Pacific

In strikes or movements that oppose political government, adults are more likely to wave them off as ‘uneducated’ and children that ‘do not know anything.’

Western Europe and Others

Adults decide for us and think our opinions are less worthy than theirs just because we are younger. Adults play a negative role when they want to have the ‘last say’ without thinking they might be wrong.

Latin America and the Caribbean

Unfortunately, sometimes it is difficult to fight for our rights at our age because adults do not necessarily take us seriously. Adults often deny our opinions because of our age, to be children. However, we want the same rights as the rest of the population. We want to be able to judge what is wrong in our world and act to change it.

Western Europe and others

The Committee has recommended training for professionals and public awareness campaigns to promote respect for children's views.⁴³



The Council of Europe's Child Participation Assessment Tool⁴²

The Council of Europe is promoting child participation, including "child activism" through a threefold approach, including the assessment of existing systems and mechanisms, the promotion of guidance and tools and support provided to the development of relevant trainings for professionals.

The Child Participation Assessment Tool provides 10 basic indicators enabling States to:

- undertake a baseline assessment of current implementation;
- help identify measures needed to achieve further compliance by states;
- measure progress over time.

<https://www.coe.int/en/web/children/child-participation-assessment-tool>

CHRDs also report concern that, even when their views are sought, they do not know how their views have been taken into account, if at all. Feedback is crucial and should be prompt, accessible to children and detailed enough for children to understand how their views have been addressed.⁴⁴

While Article 12 is of utmost significance in the context of the work of CHRDs, it applies only to matters and decision-making processes affecting children. CHRDs may be making human rights claims on issues where no decision is being made (bearing in mind that an omission may be a form of decision-making) and /or may be making claims about rights that do not affect children only or at all. However, **Article 8 of the Declaration provides support for an interpretation of Article 12 recognising that a**

child's engagement in public affairs is a matter affecting the child and therefore Article 12 applies. Moreover, ensuring that children are heard in their everyday lives enables them to build the skills and confidence to participate in other aspects of their lives including public decision-making. States should therefore take steps to ensure that children's views are sought and taken seriously in all matters affecting them.



Article 12 and its relationship with participation in public affairs

Article 12 of the CRC is the legal basis for what the Committee has defined as child participation. In its General Comment No.12,⁴⁵ the Committee stated that, although the concept of child participation does not appear in the text of Article 12, the term is widely used to describe its implementation through on-going processes, which include information-sharing and dialogue between children and adults on the development of policies, programmes and measures in all relevant contexts of children's lives. In General Comment No.12, the Committee also explains that Article 12 as a general principle provides that States should strive to ensure that the interpretation and implementation of all other rights incorporated in the CRC are guided by it, in particular children's civil and political rights (Articles 13-17).

Article 8 of the Declaration not only reinforces the intersection between Article 12 and Articles 13-17 of the CRC – which is often under looked – it also clarifies the linkages between those Articles and Article 25 of the ICCPR, which constitutes the legal basis for political and public participation rights of all individuals, including children. The OHCHR's Guidelines for States on the effective implementation of the right to participate in public affairs clearly state that when decision-making processes may have an impact on children, States should ensure that the right of children to express their views freely and to be heard is guaranteed, including by establishing child-friendly, age-appropriate, gender-sensitive, inclusive and safe mechanisms for

their meaningful engagement.⁴⁶ Arguably, all decision-making processes may have an impact, direct or indirect, on children as it has been recognized by the European Commission: ‘There are very few, if any, child-neutral policies or programmes: most have impacts on children directly or indirectly, positively or negatively. Moreover, most sectors, if not all, are interlinked and interdependent’.⁴⁷

Therefore, it is important to understand that the **Declaration supports the enhancement of child participation** and clarifies that States should seek the views of CHRDs and take them seriously on issues that are of public interest and may not affect the child directly. On the other hand, child participation is fundamental to the empowerment of CHRDs as it requires adults to make extra efforts to engage children and seek their views. Child participation processes not only are key opportunities for children who already act as defenders to influence decision-making, they are also empowering experiences that may lead to children starting to act as defenders.



Ireland’s National Child and Youth Participation Strategy

Many countries have or are developing national strategies on child and youth participation. Ireland’s is one of the most comprehensive.

Key features include:

- agreed actions for all relevant public bodies that are reviewed and monitored annually;
- an established system of local and national youth assemblies;
- a participation hub that provides training for public bodies and undertakes consultations on law and policy.

<https://www.gov.ie/en/publication/9128db-national-strategy-on-children-and-young-peoples-participation-in-dec/>

3.2. Parents'/Guardians' Rights and Duties (Art. 3(2), 5, 18(1-2) CRC)

The interconnection between parents'/ guardians' rights and children's rights is one of the key differences that makes the rights of CHRDs distinctive from those of adult HRDs. There is simply no equivalent for other HRD - a fact that further underscores the importance of using the CRC to implement the Declaration. **CHRDs' exercise of their rights needs to take account of parents' rights and duties in relation to their children.** CHRDs report that some parents/guardians will want to protect children from harm and may restrict CHRD activity on that basis. Parents/ guardians may also be concerned about the impact on the child's education. States can also play an important role by ensuring that CHRDs can act safely and in ways that are not detrimental to their education. They can also promote a positive attitude towards children who act as HRDs and support and inform parents/ guardians so that they can further empower CHRDs.

The CRC contains three provisions that refer to parents that are of particular relevance to CHRDs (Articles 5, 3(2) and 18(1)-(2)). These are discussed individually below followed by a discussion of how they might be implemented collectively in practice.

3.2.1. Parents'/ Guardians' Rights and Duty to Provide Guidance

CRC



CRC 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 recognized in the present Convention.

Article 5 plays a role across the whole Convention,⁴⁸ and is hugely important in this context given the influence that families will have as to whether and how a child acts as a HRD. The provision recognizes the distinctive and important role of parents/guardians and communities in children's lives and reflects the reality that parents would play a role in assisting children realize their rights as their capacities evolve.⁴⁹

Article 5 is unique as it **makes parents and guardians rights-holders (and duty-bearers) in a Convention designed for another group**. It extends to parents/guardians and 'others legally responsible for the child'. That might include, for example, community leaders or elders in a tribe. They are entitled to provide children with guidance in the exercise of all of their other rights. This includes all of the child's civil and political rights as well as the child's right to be protected from harm. Parents also have a duty to provide guidance – meaning that children are also entitled to receive guidance. That duty should be recognized in domestic law.



Legal obligation on parents/guardians for major decisions affecting a child

South African Children's Act 38 of 2005, Section 31: 'Before a person holding parental responsibilities and rights in respect of a child takes any decision contemplated in paragraph (b) involving the child, that person must give due consideration to any views and wishes expressed by the child, bearing in mind the child's age, maturity and stage of development.'

<https://www.justice.gov.za/legislation/acts/2005-038%20childrensact.pdf>

The right/duty to provide guidance must be exercised in line with the children's 'evolving capacities'. This phrase has been lifted out of Article 5 and increasingly used as an interpretative approach across the Convention, but it is there first and foremost to apply to the right and duty to give children

guidance. This applies across a child's life: there is no minimum age at which a child may act as a CHRD and many children begin to engage with human rights issues while at primary school. However, Article 5 recognizes that the level of **parents'/ guardians' guidance will diminish as children mature**.⁵⁰ The Committee has recognized that once children have the capacity to enjoy and claim their rights independently, they no longer have a need to rely on the right to parental direction under Article 5. A key question is what the boundaries are and when, if at all, parents or guardians can deny their children permission to act as CHRDs or limit the activities in which they take part. CHRDs recognize the need for support and guidance from parents and adults in their communities.

The human rights defender needs financial resources but also conviction, inspiration, will and love. A key aspect is the support and understanding of the people around her, a defender cannot work alone. As the defender is a child, she needs to work with others and learn from others. She needs guidance and support.

Latin America and the Caribbean

Others commented on the fact that parents tended to want their children to pursue education rather than any form of activism or were worried about their children's safety.

Parents are more likely to have their children stay at home studying, rather than participating in child-led groups aiming at raising their voices in relation to child rights violation.

Eastern Europe

However, many children were clear that the nature of the support should be to facilitate rather than prevent children from acting as HRDs.

There is a need for greater guidance as to what is required of States to respect, protect and fulfil the rights of the child to receive parental guidance in line with their evolving capacities.⁵¹ States should not interfere arbitrarily with parents'/guardians' rights, responsibilities and duties. However, a challenge may arise in practice where a parent/guardian refuses to let a child act as a CHRD. These concerns might vary depending on the child's age and the perceived level of danger. For example parents might be reluctant to allow a child to act as a CHRD even where the child is mature enough to make a decision for him/herself if there is a concern about the repercussions of the activity (e.g. an adolescent wishes to start an online campaign that may expose him/her to online abuse). CHRDs accept that the degree of parental involvement may be linked to the level of risk involved in the activity, or cultural, religious or political considerations, but emphasized that this needs to be assessed taking the child's views on this into account. In all cases, the obligation on States is to enable CHRDs to exercise their rights safely and to inform and support parents/guardians so that they can advise and guide children appropriately.

3.2.2. Right to Care and Protection with Guidance from Parents/Guardians

CRC



CRC Article 3(2)

States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

Article 3(2) provides a strongly worded obligation on States to ensure the protection and care necessary for the child's well-being. It receives little attention, largely because other Articles of the CRC address it collectively and some (such as Articles 19 and 18(2)) 'mimic' its content.⁵² It is of significance here as it underscores the obligation on the States to 'defer' to parents' and guardians' rights and duties.⁵³ However, that deference is not absolute.⁵⁴ There is a range of ways in which States might need to intervene to protect children's

well-being. It could be that parents are preventing a child from acting as a CHRD or coercing the child to act as a CHRD in circumstances where that may adversely affect the child's well-being – e.g. encouraging the child to speak out publicly when that is likely to expose them to significant risk or to attend a protest that may be violent.

3.2.3. Parents'/Guardians' Responsibilities and State Assistance

CRC



CRC Article 18

(1) States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

(2) For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

Much of Article 18 is focused on encouraging joint responsibility for children's upbringing and on the support that the States should offer in this respect. However, the second part of Article 18(1) states that parents/ guardians 'have the primary responsibility for the upbringing and development of the child. The child's best interests will be their basic concern.' This is highly relevant in the context of CHRDs, reading it alongside Article 5 and Article 3(2) in particular.

Children reported that parents/ guardians often discourage or do not give them permission to be involved in HRD activity as they are worried about their safety or impact on their education.

Parents usually don't encourage us. We are asked to keep away from situations of violence.

Asia-Pacific

The barriers that I face as a human rights defender locally are my parents because they won't allow me to defend my rights because it will harm me.

Asia-Pacific

Some children recognized that their parents were concerned for their safety and best interests and accepted that. Others spoke of the support and encouragement they had from their families, sometimes after having to persuade them that it was appropriate, with the support of other CHRDs.

It helps us to feel accompanied by teachers, the school, our colleagues and families. That they believe in our word. That they give us a space to participate. That adults respect our decisions. That they teach us how to defend our rights.

Latin America and the Caribbean

Yes there are challenges faced by children such as the refusal of their families to participate in any assembly; especially my friend at school, he has a desire to participate and see what is happening in the square but his family refused and he was not able to participate. I described what was happening in the square and encouraged him to go and there is nothing to fear about; and a time later, he succeeded to convince his father and he went to [the] square.

Asia-Pacific

While Article 18 is often discussed in the context of parents' responsibility to contribute to the realization of their children's social and economic rights, it also applies to civil and political rights and includes 'the fostering of values consistent with human rights.'⁵⁵ This aligns with Article 16 of the Declaration which emphasizes the role that individuals have to play in raising public awareness of human rights. However, there has been very limited discussion of the fact that the responsibility of parents and guardians also applies to civil and political rights, such as the rights to freedom of expression, peaceful assembly and association. **States should ensure that the CHRD's family and community have an understanding and appreciation of all children's rights and that they can also access information and support, such as legal assistance and psychosocial interventions.**

Finally, there will be instances where parents/guardians refuse the child permission to take part in HRD activity. States will not often be aware of the breach in most cases and, if they are it may be considered more harmful or just not practical or advisable to intervene in family life unless the child is considered to be at risk of significant harm. However, the State should provide specific services for CHRDs and their parents/guardians that can enable conflicts to be resolved by agreement and in ways that empower both the parents/ guardians and the child. Furthermore, CHRDs must be able to access redress when restrictions violate their rights.

3.2.4. Parents'/ Guardians' Rights: Summary of Implementation Measures

Some parents/ guardians will themselves be acting as HRDs and their activity will have had an impact on their children's views and actions. Children whose families act as HRDs should be entitled to protection from discrimination or harms that may be a consequence of that (see section 3.1.1). Parents/ guardians should advise their children without manipulating them for their own purposes (see section 3.4.2). However, when parents/ guardians are not themselves involved in HRD activity, the State has an obligation to enable them to support their children to realize their rights. However, the reality is that many parents and guardians are making decisions every day without taking into consideration their own rights or their children's or indeed knowledge or

awareness of their obligations in this regard. The State can play an important role in this regard by educating parents about children's rights, including their civil and political rights, from early childhood on. States should also promote a positive image of CHRDs, addressing any religious and cultural concerns as well as gender and other stereotypes. States can also take steps to alleviate parents'/ guardians' concerns that children will be safe when they act as CHRDs (see section 3.4.5) by fulfilling their obligations to protect children. And finally, States can provide schools and teachers with guidance on protecting the rights of CHRDs, including their right to education, that can address concerns that parents/guardians might have in that regard. If States act to inform and support CHRDs' families and create an environment where CHRDs can act safely, they will enable parents/ guardians to fulfil their obligations under Article 5 of the CRC and empower their children to act as HRDs.



States should include right and duty of parents/ guardians to provide guidance to children in the exercise of their rights in relevant domestic law.



States should educate parents about human rights and children's rights, including their civil and political rights, enabling them to make informed approaches when they are providing support and guidance to their children.



States should empower parents/ guardians to support children who act as CHRDs by ensuring that children will be protected and that their education will not be adversely impacted.



States should provide mechanisms whereby children can seek receive services and support in instances where there is a conflict between parents and children on the exercise of their rights.



States should provide accessible opportunities for CHRDs to seek redress when their rights have been restricted by parents/ guardians.

3.3. Education Rights (Art. 29 CRC and Art. 15-16 DHRD)

CRC



CRC Article 29(1)

States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment.

DHRD



DHRD Article 7

Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.

DHRD Article 15

The State has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education and to ensure that all those responsible for training lawyers, law enforcement officers, the personnel of the armed

forces and public officials include appropriate elements of human rights teaching in their training programme.

DHRD Article 16

Individuals, non-governmental organizations and relevant institutions have an important role to play in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research in these areas to strengthen further, inter alia, understanding, tolerance, peace and friendly relations among nations and among all racial and religious groups, bearing in mind the various backgrounds of the societies and communities in which they carry out their activities.

Knowledge of human rights is a fundamental prerequisite for human rights implementation and crucial for all HRDs. Article 29(1)(b) requires States to ensure that education is directed to ‘the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations.’⁵⁶ The term ‘human rights’ clearly incorporates ‘children’s rights’ and, read alongside Article 42 of the CRC, there is an obligation on States to ensure that children’s education should promote knowledge and respect for the rights in the Convention itself.⁵⁷

Ensuring that human rights education is a compulsory part of core curricula in schools and other educational institutions is one of the most effective ways of ensuring that children, and ultimately all human rights holders, are aware of their rights and able to claim them on behalf of themselves and others, including by acting as CHRDs. However, the Committee expresses concern about the lack of education about human rights, and specifically children’s rights, in almost all of its concluding observations. Many States do not provide any human rights education and those States that include it in the national curriculum do not always include a specific focus on the rights of the child.⁵⁸

CHRDs have identified a lack of education about human rights as one of the most significant challenges for their work. Many children indicated that they had not received adequate education about their rights and that this

hindered their ability to act as HRDs. Moreover, CHRDs, like others, point to the significant educational value of HRD activity: it can be a valuable form of education about human rights and generally rather than a barrier to its enjoyment.

The school should teach us peace not violence; hatred from teachers who are xenophobic, homophobic fuels this hatred in schools.

Africa

Schools should incorporate rights into school council and pupil voice, have rights education for all young people – even if you aren't in school. Schools should provide information on how to act and support rights.

Western Europe and Others

Schools should analyse with students their experiences with peaceful assemblies and support sharing the learning in the school.

Eastern Europe

Everyone could do something to make sure human rights are protected, but almost no-one does. Schools for instance, they should talk more about human rights and how to make sure you can exercise them.

Latin America and the Caribbean

Effective implementation of Article 29 (1) of the CRC and Article 15 of the Declaration at a national level would ensure that **human rights education is compulsory in national curricula at all levels**, and that this incorporates specific attention to children's rights. While schools are the obvious place for children to learn about their rights, many children are not in school at all or in government-run schools. The States remain under an obligation to **ensure that children who are not in school receive human rights education**. National human rights institutions (NHRIs) and Children's Ombudspersons

(see section 4.1) can make a significant contribution in this respect.

Effective human rights education needs to go beyond information about the content of treaties and, in line with the United Nations Declaration on Human Rights Education and Training, to ensure that children receive education not just about but also through and for human rights.⁵⁹ The Committee has also stressed that ‘Children should also learn about human rights by seeing human rights standards implemented in practice, whether at home, in school or within the community.’⁶⁰ It also means that **children should not just learn what rights they have, but also how to claim them and defend their own rights and the rights of others**. Student protests, for example, have been recognized as having ‘a high educational value as they are among the first experiences of public participation and human rights defence of students.’⁶¹ **HRD activity can contribute to rather than detract from children’s enjoyment of their right to education**. Children should also be given opportunities to develop the skills that they will need to exercise their rights effectively. The Special Rapporteur on freedom of expression has highlighted the importance of ‘participatory educational programmes that encourage critical thinking, the capacity for expression and a culture of peace.’⁶²

The Committee has stressed that human rights education will not be possible ‘unless those who are expected to transmit, promote, teach and, as far as possible, exemplify the values have themselves been convinced of their importance.’⁶³ School culture, often established by head-teachers and governing bodies, should be respectful of the human rights of all, including the right of teachers as well as students to act as HRDs. **Pre-service and in-service training schemes that promote children’s rights-based practice are essential** for teachers, educational administrators and others involved in children’s education in formal and informal settings. This applies to the teaching methods used as well as approaches and other policies such as those on discipline, pastoral care, and child protection.

In the context of CHRDs, it is particularly important that schools and educators do not breach children’s civil and political rights when children act as HRDs. This includes respecting, protecting and fulfilling children’s rights to freedom of expression, to assemble and to protest. Schools have been the focus of domestic litigation in this regard, with national courts acknowledging, for

example, that children do not lose their rights when they enter the school gate.⁶⁴ Ensuring that educators do not act in ways that breach these rights will require **national education laws and policies that provide direction to schools and others as to how they can be compliant with human rights when children act as CHRDs**. Moreover, in practice, one of the challenges is that the value schools place on educational attainment will mean that activities that are considered to detract from that may be prohibited or discouraged. Moreover, the pressure on children to achieve academically may also act to restrict the time that children have available for CHRD activity.

3.3.1. Education Rights: Summary of Implementation Measures



States should ensure that all children, whether in school or not, receive human rights education.



School and national curricula should incorporate compulsory human rights education and this should include material on children's rights to act as HRDs.



Human rights education should include enable children to claim their rights, understand the rule of law, and learn how to seek redress for breaches of human rights in school and elsewhere.



Training programmes for teachers and other educators should include compulsory children's rights training which specifically addresses children's rights to act as a CHRDs.



Schools and other education providers should ensure that children's human rights are respected in the learning environment. This should include: opportunities for meaningful participation; conflict resolution; and anti-bullying policies.



Schools and other education providers should involve children in the development and implementation of schools policies that may enable or act as a barrier to their ability to act as CHRDs.



NHRIs should provide children with accessible information on their rights and how they can act as CHRDs.

3.4. Protection From Harm (Art. 19, 36, 37, 39 CRC and Art. 9, 10, 12 DHRD)

CHRDs who act for their rights and those of others often **experience violence and stigmatization just because they are children** and will be perceived by some to be breaking social and cultural traditions that expect them to be quiet. Children are also **more vulnerable to harm** due to their size, lack of power and the fact that they are still developing. The risk of harm increases for certain groups of children, such as girls, children with disabilities, children in street situation, children in armed conflicts and humanitarian situation, ethnic minorities and indigenous children. Children, including CHRDs, may **become the explicit target for violence as a way of deterring others**, especially their families, from acting as HRDs. These harms may increase as their activity becomes more visible or successful. **Children are affected by distinct forms of harm** such as the use of physical punishment or denial of food and liberty. **A measure that may pose a small risk to adults (e.g. crowd control in a protest) can be more dangerous when used on children.** Moreover, children's context, in particular **their school lives, provides a distinct arena for additional types of harm** such as bullying by peers and punishment by teachers. Finally, **parents have a distinct role to play in protecting children from harm, including violence, at home and elsewhere.**

The challenge of balancing the child's right to be protected from harm with the child's civil and political rights is one of the distinctive and most challenging aspects of CHRDs. However, it is important to recognize that those rights are inter-dependent. If children are to be safe, they need to be able to access information, be heard and taken seriously. Civil and political rights do not in themselves put children in danger: if they are realized fully, children should be able to exercise their civil and political rights without adverse impact on their right to protection. Empowering children is key to ensuring their protection when they act as CHRDs. It is important that any measures adopted to ensure that children are protected from harm do not operate at the expense of their enjoyment of their civil and political rights: the strengthening of protection mechanisms cannot be at the expense of providing an enabling environment for CHRD to act.

The CRC offers children enhanced rights to protection in recognition of the fact that ‘the child, by reason of his physical and mental immaturity, needs special safeguards and care.’⁶⁵ The key provision in this respect is Article 19 of the CRC discussed below. However, a number of other Articles are of significance here including Article 3(1) (best interests principle), Article 6 (life, survival and development), Article 12(1) (right to be heard), and Articles 13 and 17 (information). The CRC has a range of special protections for certain children, including but not limited to those with disabilities, children in alternative care, children in detention and those involved in armed conflict. Children also have specific rights to be protected from all forms of exploitation, including sexual and economic exploitation, trafficking, and these rights (particularly Articles 32-36) are considered below. And finally, Article 37 reaffirms children’s longstanding human right to be protected from torture, inhuman and degrading treatment and capital punishment, while Article 39 is a right unique to children and requires States to promote the recovery of children who have been the victims of harm.

CHRDs report receiving threats and physical and emotional abuse as a result of their human rights activities. In the DGD2018 consultation, 70% of the children reported experiencing violence or abuse when acting as CHRDs.⁶⁶ This fear is further intensified by the fact that **when children report a human rights violation, or turn to an adult for help, they may not be taken seriously.** Local authorities, especially the police forces, rarely receive proper training to be able to deal with children with a child rights approach.⁶⁷ In line with Article 9 of the Declaration, children should have opportunities for redress and effective remedies when their rights as defenders are breached (see section 4).

*When you defend human rights,
someone may attack you.*

Eastern Europe

3.4.1. Protection from Violence, Injury, Abuse, Neglect, Negligence, Maltreatment

CRC



CRC Article 19

(1) States Parties shall 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, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

(2) Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

DHRD



DHRD Article 12(2) The States shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.

DHRD Article 9(1) In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration, everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.

DHRD Article 9(5) The States shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

Article 19 reframes children as **rights-holders rather than victims in need of assistance**; places significant **emphasis on prevention as well as protection**; and puts an obligation on States ‘to adopt supportive measures that will prevent the occurrence of violence and abuse by **addressing the external factors that contribute to the risk of harm.**’⁶⁸ It is notable that it is a mandatory obligation with the phrase ‘shall take’ leaving ‘no leeway for the discretion of States.’⁶⁹ **Lack of resources cannot justify a State’s failure to take any or enough measures needed to protect children from harm.**⁷⁰ The significance of the provision for the implementation of the Declaration is that **CHRDs enjoy greater protection from a wider range of harms than adult HRDs.**

The Committee has adopted a broad definition of ‘violence’ that includes all forms of physical and mental injury and abuse⁷¹ and emphasizes most strongly that the term violence ‘must not be interpreted in any way to minimize the impact of, and need to address, non-physical and/or non-intentional forms of harm (such as, inter alia, neglect and psychological maltreatment).’⁷² The concept of ‘holistic security’,⁷³ used widely for HRDs, enhances understanding of the realization of Article 19 for CHRDs given its emphasis on the HRD’s subjective experience and participation.



‘HOLISTIC SECURITY’ (Tactical Technology)⁷⁴

The reference to ‘differing needs of our bodies and minds’ encompasses the diverse experiences of children.

‘How we define our well-being in the context of activism is subjective and deeply personal. It is influenced by the differing

needs of our bodies and minds, the challenges we face, our beliefs (religious, spiritual or secular), our gender identities, interests and relationships. As activists and human rights defenders, we must define security for ourselves and build solidarity and support for one another into our groups, organizations and movements on this basis.'

<https://holistic-security.tacticaltech.org/support-for-hrds.html>

Article 19 encompasses many of the experiences HRDs confront as a result of and during the course of their activity. One of the major concerns identified by CHRDs is that of reprisals for their activity. This can come from family, peers, teachers, religious leaders, the State and members of the public. It includes physical and verbal assaults as well as online trolling, stigmatization and psychological pressure. The harm does not have to be intentional: 'the critical consideration is whether the **impact on the child, assessed objectively or subjectively** is such that it falls within the scope of the terms under Article 19.⁷⁵ Moreover, a child should not have to prove that the harm they are experiencing is a consequence of activity as a CHRD: the protection applies irrespective of the intentions of those causing harm.

The right extends to all children (with the phrase in the care of parents, legal guardians, etc., largely seen as redundant) and must be implemented without discrimination (Article 2).⁷⁶ On this basis, **there is no argument for having less protection or fewer preventative measures for children who are, for example, older.**

It has been widely recognized that female CHRDs experience additional difficulty when they act as HRDs, as it challenges 'accepted socio-cultural norms, traditions, perceptions and stereotypes' about the role and status of women in society and that this can, in certain contexts, lead to hostility or lack of support from the general population, as well as from the authorities.⁷⁷ These challenges impact disproportionately on girls who experience fear, threats, violence and stigmatization not just because they are children, but

because they are *both* young and female. Secondly, the nature of violence and threats facing girls is often different from that facing other children. Girls are more likely to face sexual harassment and violence, which is often intended to silence girls and deter others from speaking up. Thirdly, many girls are advocating on issues related to gender equality, which is often perceived as controversial and may put them at extra risk.

Other children can also experience additional or distinct harms when they act to defend their own rights. These include working children; children who identify as gender non-conforming and/or LGBTQI+; indigenous children; children from ethnic, religious and linguistic minorities; children with disabilities; children who are trafficked or exploited sexually or economically; children on the move; children in fragile contexts and situations of armed conflict; children in detention and institutions; children in street situations; children in poverty. CHRDs also report challenges for children who live in rural or remote areas.⁷⁸ The right to be protected from harm applies to the actions of the States and the actions of non-State actors. Clearly the States should not cause children harm when they are, for example, involved in protests. The OHCHR's guidance on policing reiterates the additional rights that children have and states: 'Children shall be treated in a manner which promotes their sense of dignity and worth; which facilitates their reintegration into society; which reflects the best interests of the child; and which takes into account the needs of a person of that age.'⁷⁹

Moreover, States must do everything they can to protect children from actions, such as threats and abuse by non-State actors, including reprisal by family, teachers, peers, religious leaders or members of the community or the general public, online and offline. In practice, this may require the development of a fundamental shift in attitude towards children who stand up for their rights and the rights of others and include public awareness campaigns. The Committee has said that 'educational measures should address attitudes, traditions, customs and behavioural practices which condone and promote violence against children.'⁸⁰ Moreover, providing media guidelines is also important given that **some CHRDs will attract significant media attention, some of which is negative, stigmatizing and abusive.** The Committee has

warned that stereotypes ‘pave the way for State policies based on a punitive approach, which may include violence as a reaction to assumed or factual misdemeanours of children and young persons.’⁸¹

States should take all reasonable steps to ensure that online providers take measures to ensure that CHRDs are safe online. This aligns with principle 5 of the Children’s Rights and Business Principles, requiring businesses to ‘ensure that products and services are safe.’⁸²

While States should do all that is reasonable to protect adult HRDs who place themselves in situations that may be harmful, adults are generally free to make an autonomous choice (although the State is, in either case, under an obligation to take steps to protect them). If children wish to undertake actions that may cause them harm, there is an immediate obligation on the States to keep them safe. The default position should not be to prohibit children’s activity but to do all that is reasonable to make it safe for them to act and only to prevent the child from acting where the consequences of the harm is significant, and it is not possible to keep them safe. Attention must be given to the harms that might result from children being denied enjoyment of their civil and political rights. **CHRDs should also be informed and enabled to assess risk and make decisions about their own safety: their empowerment is crucial for ensuring their protection from harm.**

A further factor that appears to be distinctive about CHRDs is the abuse, in particular bullying and cyberbullying that they may encounter from their peers when they engage in HRD activity. Many children reported receiving abuse and bullying from other children in their schools. There are clear obligations on schools to prevent children from experiencing bullying in any form or for any reason, including this. The fact that children encounter this for defending human rights reinforces the requirement for comprehensive human rights education (discussed at section 3.4). Moreover, the Committee has said that ‘although children are the actors, the role of adults responsible for these children is crucial in all attempts to appropriately react and prevent such violence, ensuring that measures do not exacerbate violence by taking a punitive approach and using violence against violence.’⁸³

3.4.2. Protection from Exploitation

CRC



CRC Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

DHRD



DHRD Article 10

No one shall participate, by act or by failure to act where required, in violating human rights and fundamental freedoms and no one shall be subjected to punishment or adverse action of any kind for refusing to do so.

The CRC contains a series of 'special protection measures' that are intended to give children additional protections from economic exploitation (Article 32); drugs (Article 33); sexual abuse and exploitation and abuse (Article 34); abduction, sale and trafficking (Article 35) and all other forms of exploitation (Article 36). Reading these alongside Article 10 of the Declaration, reinforces the fact that no one should violate children's human rights. Nor should anyone be punished for refusing to exploit CHRDs.

Articles 32-36 recognize that children can be more at risk of being victims of these forms of exploitation or may endure more severe consequences as a result of them or both. The human rights entitlements that they provide may be the focus of CHRDs' activity and they may also be acting as CHRDs because they themselves have experienced a breach of these human rights. Reading these Articles alongside Articles 12, 13 and 15 reinforces the fact that children have a right to act as HRDs on these issues as matters affecting them. Crucially '**children themselves should be actively engaged in the process of identifying practices which are exploitative and the development of measures to address such exploitation.**'⁸⁴

Article 36 may be particularly relevant to CHRDs given the fact that it is a 'catch-all' provision and may therefore pick up on forms of exploitation that are directly connected to their activities. Exploitation is defined broadly as follows: 'one person or persons (usually but not necessarily an adult), takes advantage of a child by encouraging or coercing the child by whatever means to undertake an activity that provides that person and/or other persons with a benefit.'⁸⁵ That benefit will not be commensurate with the benefit to the child (if any).

This has implications for the work of CHRDs in a number of ways. First, they are entitled to be protected from adults, businesses, organizations and other children who wish to exploit children to promote their own messages. A common accusation levelled at CHRDs is that adults are manipulating them for their purposes. While this is often deployed to undermine CHRDs, the possibility of it happening should not be ruled out and the States should ensure that adults and others make sure **that participation in CHRD activity is informed and voluntary and that CHRDs who work with civil society organizations and other children do not experience manipulation that amounts to exploitation** or breaches of their rights to freedom of conscience and freedom of expression. However, the voluntariness of participation is a continuum and it has been suggested that this 'ranges from regime instigated to voluntary activity. It may be that in many large-scale mobilization projects, though the children may not have initiated the project themselves, they may be well informed about it, feel real ownership of the issue, and even have some critical reflection about the cause.'⁸⁶ A further way in which CHRDs might be exploited is economically, especially given that some CHRDs have very significant public and/or social media profiles. CHRDs have been able to use this interest to extend their reach and are entitled to protection from economic and other exploitation by the media and businesses when they do so.

3.4.3. Protection from Torture or other Cruel, Inhuman or Degrading Treatment

CRC



CRC Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

This part of Article 37 repeats the longstanding and absolute prohibition of torture and other ill-treatment. While the text is the same as in other treaties, including the ICCPR and the Convention Against Torture, what constitutes torture or cruel, degrading and inhuman treatment for children is not always the same as it is for adults. This Article needs a ‘child-centred’ interpretation: certain forms of violence such as domestic violence, bullying in school and sexual abuse may fall within the scope of Article 37 when experienced by children.⁸⁷ Although protection from these forms of violence is covered by other CRC rights, recognizing that they fall within Article 37 increases the pressure on States to take remedial action.⁸⁸

3.4.4. Recovery and Reintegration

CRC



CRC Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 39 is a unique provision that ‘takes on the dual roles of providing immediate relief for children and mitigating the ongoing effects of the harm they suffered.’⁸⁹ It means that HRDs who have experienced violations of Article

19 or Article 37 should be able to access appropriate support (counselling, rehabilitation, physiotherapy etc.) and that any supports provided should foster 'the health, self-respect and dignity of the child.' Children may suffer physical and mental injury and trauma as a result of their CHRD activity and this provision recognizes their entitlement to support, including health care (Article 24 CRC), to aid their recovery from that. It has also been suggested that support for 'child victims' should extend into adulthood if the harm was experienced as a child.⁹⁰

3.4.5. Mechanisms and Programmes for Protection

Given the significant risk to CHRDs and consequences of the risk, alongside the greater level of protection afforded by the CRC, it is crucial that States monitor and promote the implementation of the rights of CHRDs and provide appropriate support to CHRDs. One of the most important ways that States can ensure that CHRDs are protected from harm is to provide children with the information and support that they need to identify and assess potential risks from any planned activity so that they can make an informed choice about whether to undertake that activity, adapt their plans or choose a different option.

CHRDs should be aware of and have access to multiple, safe, child-appropriate mechanisms to report reprisals, violence and abuse, seek redress for violations and receive support and care for physical and psychological abuse. This may require adapting processes and practices within these mechanisms to ensure that all interactions with children are conducted in a child-sensitive manner in a suitable environment that accommodates the particular needs of the child, according to his or her abilities, age, intellectual maturity and evolving capacity. States should ensure that the principles of informed consent, privacy, and confidentiality are fulfilled.

Protection mechanisms for HRDs take many forms, including: those specific to HRDs, NHRIs, child specific institutions such as Children's Ombudspersons (see section 4.1), programmes and services, such as child helplines, relocation programmes and other practical responses to HRDs at risk. Whatever the mechanism and whether it is local, national or international, it should have adequate funding and be accessible to children and their families; information

about these mechanisms should be made available to children in a language and format they can understand; support services should be provided to help children raise complaints; there should be appropriate and effective safeguarding policies and procedures in place; and children's rights should be taken into account, including children's right to be heard, to have their best interests as a primary consideration and not be separated from their parents/ guardians; etc. The latter is particularly important if CHRDs are at risk and need to be moved to a place of safety or if they are held in detention.

Children's rights should be mainstreamed within all forms of protection mechanism and programmes to support HRDs.

The mechanism responsible for providing protection should also have a preventative role in empowering CHRDs and minimising potential risks. This should include: understanding the root causes of violations in relation to the specific context in which CHRDs act and specific challenges that they face; supporting the design of policies that deal with the causes of violations of the rights of CHRDs in collaboration with children; contributing to the creation of enabling environments for CHRDs, empowering CHRDs as to how to evaluate risks and protect themselves; denouncing and proactive investigation of the threats and violations of human rights.



Differentiated approach in protection mechanisms

Rulings of the Constitutional Court of Colombia have provided the legal basis for the application of a differentiated approach in the analysis of issues, including risk assessments, involving the rights of children and adolescents.

Colombia's protection program includes a 'differential approach' for populations particularly affected by internal displacement, as well as for four groups identified as being in a situation of particular risk. This 'differential approach' came through Decree 4912 of 2011, which establishes that 'for the Risk Assessment and for the recommendation and

adoption of measures of protection, specific characteristics and vulnerabilities of age, ethnicity, gender, disability, sexual orientation, and the urban or rural origins of the individuals being protected must be taken into account.' Further decisions then added the obligation to guarantee a differentiated approach to the rights of children and adolescents.⁹¹

3.4.6. Protection Rights For CHRDs: Summary of Implementation Measures



States should ensure that CHRDs have access to multiple, safe, child-appropriate mechanisms to report reprisals, violence and abuse, seek redress for violations and receive support and care for physical and psychological abuse.



States should ensure that CHRDs can access information that enables them to assess risk and that their views are sought and taken seriously in any decisions that are made about protecting them from harm.



States should ensure that if CHRDs are threatened with or have experienced violence, allegations are investigated promptly and thoroughly and the CHRD can access a prompt means of seeking redress for violations and an effective remedy.



States should ensure that police officers and those working in education, child protection, and health care and the justice system should receive training on children's rights and the needs of CHRDs in particular.



States should ensure that schools and other educational institutions should develop and implement effective strategies, in consultation with children that address the bullying and other forms of abuse that CHRDs may encounter, online and offline, from staff and other children as a result of their activities.



States should ensure that CHRDs are protected from all forms of exploitation, including by their families, civil society and businesses and the media.



States should conduct public awareness campaigns promoting understanding of CHRDR's rights.



Civil society organizations should develop and implement child safeguarding procedures that ensure that CHRDRs receive information that enables them to make informed decisions, are acting voluntary and are safe from harm.

3.5. Civil & Political Rights (Art. 13, 14, 15, 16, 17 CRC and Art. 5, 6, 7, 12, 12(2), 14(a), 16(1-2) DHRD)

Historically the exercise of children's civil and political rights has been overlooked. This is despite the fact that children as human beings are entitled to enjoy all the civil and political rights under the ICCPR and the CRC affirms these rights for children. However, the recent advocacy efforts of children in relation to climate change have created a debate about the scope of children's civil and political rights, the nature of the obligations on States with respect to these rights and the circumstances in which they can be restricted.

With respect to the scope of these rights it is important to recognize that just because children are still young and may still be at school, this does not mean that they cannot exercise their civil and political rights. The circumstances and ways in which they exercise these rights may be different to adults, but they are still entitled to do so.

Importantly the obligation imposed on a State is to ensure the effective enjoyment of children's civil and political rights. This means that rather than simply being a negative obligation to refrain from interference with children's rights, a State must actually take positive measures to enable children to exercise their civil and political rights effectively. Thus, for example, States must ensure that children have the appropriate means and settings in which

they can exercise their civil and political rights safely whether this occurs in a school, a public setting or some other context.

In practice, **children experience more restrictions on the exercise of their civil and political rights because they are children**, often without a clear legal and evidential basis. Children's civil and political rights are subject to the permissible restrictions provided by the CRC and the ICCPR. The restrictions in the CRC reaffirms those in the ICCPR and in all cases the test is the same: the restriction must be lawful, pursue a legitimate aim, be necessary and proportionate. However, there appears to little consideration of how these tests are or should be applied in practice when the rights holders are children.

Moreover, even when none of above mentioned restrictions are applicable, adults may nonetheless stop children from exercising their civil and political rights in order to ensure the child's effective enjoyment of his/her other rights (e.g. to be protected from harm, to education). This happens to individual children (e.g. decisions made by parents/ teachers) and children as a group (e.g. decisions made by legislators (such as minimum age restrictions), schools, police). **Limiting civil and political rights due to balancing the rights of the same individual would rarely, if ever, be applied to any adult and there is currently a lack of clarity as to how a conflict between children's own rights should be handled.** This often results in the use of protective concerns as an excuse to limit children's enjoyment of their civil and political rights.

In general, there has been little discussion of when and how children's civil and political rights can be restricted. Indeed, it is important to recall that:

- A State has an obligation to first explore whether measures can be taken to ensure that a CHRD can act safely thus avoiding the need to limit the exercise of children's civil and political rights in order to protect them from harm.
- The best interests of the child cannot be reduced to protecting a child from violence. A proper understanding of a child's best interests includes their ability to enjoy the full range of rights, including their civil and political

rights.

- Parents'/ guardians' right to provide advice and guidance to a child in the exercise of their civil and political rights is not absolute and remains subject to the requirement that it must be consistent with a child's evolving capacities (see section 3.2).
- The tests of necessity and proportionality still apply to any attempt to restrict a child's civil and political rights for protective concerns. Not all harms or impacts on a child's education should outweigh their civil and political rights and not all restrictions need to be blanket bans, age-based or unlimited in time.

Finally, if justifiable restrictions are imposed on a child's civil and political rights the process, outcome and reasons for such a decision must be transparent and communicated to children. Children are entitled to have their views sought and taken seriously and should be provided with accessible and age-appropriate information at all stages of the decision-making process.



The right to vote: the missing right?

One of the key differences between children's civil and political rights and that of adults' is that **children do not usually enjoy the right to vote**. This lack of a right to vote is one of the reasons underpinning Article 12 of the CRC. When children cannot vote, it is even more important that children enjoy their other civil and political rights as these provide the opportunities to influence public decision-making. The CRC does not address the right to vote directly but the Committee has commended States who have lowered the voting age. Moreover, enabling children to participate in elections expand children's potential to act as HRDs through casting their vote to a political option that is in line with these interests and by using initiatives and referenda where available. It also sends an important message to the general public about children's capacity and entitlement to be heard.

3.5.1. Freedom Of Expression

CRC



CRC Article 13

(1) The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

(2) The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others; or
- (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

DHRD



DHRD Article 6

Everyone has the right, individually and in association with others:

- (a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;
- (b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;
- (c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

DHRD Article 7

Everyone has the right, individually and in association with others to develop and discuss new human rights principles and to advocate their acceptance.

Article 6 of the Declaration provides an important explanation of the exercise of right to freedom of expression and information in the context of the work of HRDs. There has been limited recognition of the fact that the right to freedom of expression is a right enjoyed by children.⁹² Read alongside Article 13 of the CRC, Articles 6 and 7 of the Declaration reinforce the fact that the child has a right to seek, receive and impart information about human rights and freedoms, and to develop and discuss new human rights ideas and advocate for their acceptance. This provision, among others, is of key importance for CHRDs: ‘freedom of expression is the primary channel for participation and serves as a mechanism for inclusion.’⁹³

Article 13 covers expression in an array of formats that might be particularly appropriate for children, including art and media of the child’s choosing. Article 13 extends to children’s right to seek, receive and impart information. The latter is sometimes lost when the right is explained to children. For CHRDs, the right to impart information is as important as the right to seek information. For example, much of the activity of young environmental activists has been shaping understanding of environmental human rights more generally. Peer-to-peer education programmes can provide an important mechanism for this, building children’s capacity and opening opportunities particularly when the issue at stake is stigmatized (for example reproductive and health rights). Journalists reporting on human rights issues have been recognized as HRDs and child journalists should enjoy the same recognition and protection.

The inclusion of the phrase ‘regardless of frontiers’ in Article 13(1) is especially significant given the capacity for global communications via social media and the Internet.⁹⁴ It is also highly relevant to the work of CHRDs many of whom are working on transnational and global issues, including for example climate change. The Special Rapporteur on freedom of expression has observed that ‘Children face particular hurdles to the realization of their right to freedom of

expression as a result of entrenched paternalistic attitudes that often overstate the risks of allowing children to communicate freely and underestimate their agency. In addition, the rights of children are also affected by all the barriers hampering the freedom of expression of adults.’⁹⁵

CHRDs have reported a number of challenges related to the exercise of their rights under Article 13. First, they are often not being permitted to speak or publish their thoughts due to the fact that they are children and not considered competent to speak. And secondly, many do not have access to the information they need to access or the means to communicate information to others. Some CHRDs such as children with disabilities, children who are homeless and children in poverty experience additional barriers as they often do not enjoy equal access to information. While this can be due to resource issues affecting their communities generally, CHRDs often face additional hurdles due to having to get the permission or help of adults. A particular challenge arises when children express views with which adults (parents, teachers, religious leaders, state authorities) disagree. Finally, children are sometimes restricted from speaking out by adults who have concerns about their safety. The Special Rapporteur on freedom of expression has suggested that ‘the possible risks that children face as a consequence of their young age and relative immaturity are overstated and used as an excuse for unduly restricting the rights of both adults and children to freedom of expression.’⁹⁶ Moreover, many children will choose to act in spite of adult concerns and need to be protected from harm, including informing and empowering them to understand and address risks.

CHRDs have reported the following challenges when exercising their rights under Article 13.

The society we’re living in mocks us when we try to raise our voice about a certain issue, treats us as people who’re unable to take responsibility and not as people who’re able think seriously on these matters.

Asia-Pacific

Children wish that adults support them to know more about their rights. More information and education about human rights are needed, in order to strengthen children to become themselves human rights defenders.

Africa

Children and youth have poor information about the opportunities they have as CHRDs or the ways they can stand for their and others' rights.

Eastern Europe

Challenges in securing the right to freedom of expression were recognized in DGD2018. In addition to the challenges of accessing information, issues were raised in relation to the accuracy and trustworthiness of the information that children find or are given (the challenge of misinformation and 'fake news'). DGD2018 recommended that CHRDs 'receive specific, comprehensive and appropriate information so that they can express their opinion and take part in decision-making processes. States should ensure free and accessible information to all children by various means, including the Internet and build their capacity to analyse and think critically about the information they access.'⁹⁷

Article 13(2) sets out the permissible restrictions to the right. The Special Rapporteur on freedom of expression has established a set of principles to be followed when decisions are made about restrictions within the context of the right.⁹⁸ While all of these apply to children's exercise of their civil and political rights, some of the principles may have particular significance when considered in relation to the work of CHRDs. For example, the fourth principle (d) states that 'restrictions must be accessible, concrete, clear and unambiguous, such that they can be understood by everyone and be applied to anyone.'⁹⁹

It is worth noting that Article 13(2) includes references to the rights and reputations 'of others.' It does not include a restriction about protecting the

child's own rights.

Children's right to freedom of expression may, in practice, be limited on the basis that the exercise of the right may not be seen by adults to be in the child's best interests under Article 3(1) of the CRC or because adults wish to prevent them from harm under Article 18 of the CRC. Moreover, limitations may also be imposed in the context of their schools and be justified with reference to the rights of other children in the school. Any such limitations should comply with the principles proposed by the Special Rapporteur on freedom of expression, for instance: they should not undermine or jeopardise the essence of the right; they should not be arbitrary or unreasonable; they should be proportionate and they should be kept under review.¹⁰⁰

3.5.2. Freedom of Thought, Conscience and Religion

CRC



CRC Article 14

- (1) States Parties shall respect the right of the child to freedom of thought, conscience and religion.
- (2) States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
- (3) Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

DHRD



DHRD Article 6

Everyone has the right, individually and in association with others:

(c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to

draw public attention to those matters.

DHRD Article 7

Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.

The child's right to freedom of thought, conscience and religion has been largely overlooked (or devolved to parents).¹⁰¹ Moreover, the limited consideration of the Article to date has been dominated by a focus on freedom of religion. For CHRDs, like all HRDs, the right to freedom of thought and conscience is of major significance. Articles 6 and 7 of the Declaration therefore address a significant gap in the understanding of Article 14 generally and for CHRDs in particular. The Declaration makes it clear that implementation of Article 14 for CHRDs includes the following: a right to study, discuss, form and hold opinions on the observance of human rights, to draw attention to human rights issues; and to develop and discuss new human rights ideas and to advocate for them. Child environmental activists, for example, have been at the forefront of campaigns to promote understanding that the prevention of environmental harms is a human rights issue.

The CRC, in turn, supplements understanding of the Declaration, by recognizing that this right, often denied to children, is their fundamental human right. It challenges assumptions that children cannot form or develop their own beliefs and ideals.¹⁰² It should be interpreted and applied in the context of other relevant CRC rights. These include children's right to seek, receive and impart information (Article 13) and right to advice and guidance from parents/ guardians – an element of Article 14, which echoes Article 5 of the CRC (discussed at 3.2.1).

Article 14 includes a **positive obligation to enable children to form, hold and express thoughts** and a negative obligation not to interfere with the right (e.g. through indoctrination in school or elsewhere or punishing CHRDs holding and expressing certain beliefs). The States also has an important role

to play in ensuring that non-States actors (parents, teachers, elders) do not limit the exercise of the right unjustifiably. The Human Rights Committee considers that its equivalent in the ICCPR (Article 18) permits public school instruction in subjects such as the general history of religions and ethics if it is given in a neutral and objective way.¹⁰³ This interpretation can be applied to extend an understanding of ethics to human rights principles and values. Restrictions on the exercise of the right to manifest one's beliefs, as with other provisions, must comply with Article 14(3) of the CRC and must be necessary and proportionate.

3.5.3. Freedom of Association and Peaceful Assembly

CRC



CRC Article 15

(1) States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

(2) No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (order public), the protection of public health or morals or the protection of the rights and freedoms of others.

DHRD



DHRD Article 5

For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels:

- (a) To meet or assemble peacefully;
- (b) To form, join and participate in non-governmental organizations, associations or groups;

DHRD Article 12

Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.

Children enjoy a right to freedom of association and peaceful assembly. This is exactly the same entitlement enjoyed by all HRDs; there are no additional restrictions or elaborations of the scope of this right for children within Article 15 itself. However, Article 15 needs to be understood and applied in the context of children's other rights in the CRC including, for example, their right to be heard and to be protected from harm.

Children *must* enjoy the freedom and the right to assemble peacefully to oppose the decisions that affect their present and their future. In practice, children are often prevented by adults from joining or forming associations and taking part in peaceful assemblies such as protests.¹⁰⁴ These limitations are rooted in societal concerns about activism not being appropriate for children and/or concerns about children's safety. Some of these concerns have foundation: HRDs can be demonised and harassed for such activity and this can affect CHRDs in particular as they can be the subject of backlash both on account of their activity and their age. States should ensure that a child who takes part in public life and peacefully assembles or creates an association/club/Parliament is understood to be exercising a fundamental right. The right to participate in public affairs is not only for adults. One of the most important aspects of Article 15, therefore, is the fact that it appears in the CRC and that in itself confronts and reverses 'the traditional perception that the rights to freedom of association and assembly for children were largely irrelevant.'¹⁰⁵

Freedom of Association

Freedom of association is a crucial aspect of the work of all HRDs but might be considered to be particularly important for CHRDs. CHRDs frequently choose to work alongside other children or adults in order to gain the additional support (including capacity building, peer support, access to information) or protection that they may need in the course of their activities. Many CHRDs operate under the umbrella of established civil society organizations, youth groups, associations or parliaments. However, Article 15 recognizes their right to work with others to form their own associations and thus underscores the ability to form child-led movements. The Committee has advised that: 'Legal recognition must be afforded to adolescents to establish their own associations, clubs, parliaments and forums, both in and out of school,

form online networks, join political parties, and join or form their own trade unions.¹⁰⁶

States are under an obligation to ensure that both States and non-State actors do not interfere with the right to freedom of association. They are also under a positive obligation to ensure that children are able to enjoy this right. In practice, children are often prevented from forming or joining associations, with some of these restrictions forming part of national laws. In many countries, legislation and other regulations have introduced barriers to the registration of civil society organizations, such as the need for authorization to operate or to gain legal personality or drawn-out costly registration procedures and/or the criminalisation of the activities of non-registered associations.¹⁰⁷ These challenges are heightened for CHRDs. The Committee has frequently expressed its concern to States that have: minimum age restrictions; prohibitions on children meeting in public spaces; prohibitions on children's involvement in political activity; and a bar on children forming or being members of trade unions.¹⁰⁸ **States have a positive obligation to foster a safe and enabling environment for CHRDs to come together and form associations, including by removing age-based discriminatory practices that restrict participation of CHRDs in public decision-making, as well as by providing resources for the work of CHRDs and child-led organizations.**

Minimum age restriction on forming association are, in practice, one of the most significant barriers for children to form associations, since practically all laws and regulations around the world ask for a legal personality and the age for legal personality usually coincides with the age for legal capacity/maturity which is often 18 (or 21 in some countries). An associated challenge is the issue of the legal liability of such associations. States could, for example, not make legal recognition a pre-condition for associations to operate. However, another major obstacle could be bank account and other financial implications for child-led associations. In practice, CHRDs will need the support of adults or a partnership with adults to function as a formal association.



Ensuring compatibility of freedom of association legislation with international standards

The Supreme Court of Estonia found that the provisions of the Non-Profit Associations Act that restricted the right to form and lead associations to persons over the age of 18 years old was in contravention of article 15 of the Convention on the Rights of the Child.

<https://www.riigikohus.ee/en/constitutional-judgment-3-4-1-1-96>

The nature of the restrictions in Article 15(2) has received limited attention.¹⁰⁹ It is difficult to see how restrictions on the right of CHRDs to form or join associations with a view to promoting human rights can be justified on the basis that it falls within any of the grounds provided in Article 15(2) simply because they are under the age of 18. If so, any restrictions on the exercise of the right by CHRDs have to be justified with reference to a balancing exercise with the child's other rights (e.g. to be protected from harm, right to education) or the rights of others (e.g. the enjoyment of the rights of other children in the context of a school). In such instances, the default position should not be to assume that education or safety will always prevail. Moreover, as in all such instances, the restriction must be lawful, necessary and proportionate.

Freedom of Peaceful Assembly

The right to peaceful assembly can 'help to give voice to minority opinions and bring visibility to marginalized or underrepresented groups.'¹¹⁰ It is **particularly important for CHRDs as they often lack political power and are not represented in traditional structures.**¹¹¹ Gathering with others online or in person for a common purpose provides an important way in which children can come together to be heard and to take part in social and political life. It is also an important means by which children can assert and claim all of their other human rights (such as the right to education, to be protected from harm etc.). Children with disabilities have a specific right to 'enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and

facilitate the child's active participation in the community' (Article 23, CRC). As with the right to freedom of association, States should not interfere with the exercise of the right and should take positive steps to ensure that all children can enjoy it safely.

The Human Rights Committee has said that States must thus promote an enabling environment for the exercise of the right of peaceful assembly without discrimination, and put in place a legal and institutional framework within which the right can be exercised effectively. Specific measures may sometimes be required on the part of the authorities. For example, they may need to block off streets, redirect traffic or provide security. Where needed, States must also protect participants against possible abuse by non-State actors, such as interference or violence by other members of the public,¹¹² counterdemonstrators and private security providers. States must ensure that laws and their interpretation and application do not result in discrimination in the enjoyment of the right of peaceful assembly, for example on the basis of race, colour, ethnicity, age, sex, language, property, religion or belief, political or other opinion, national or social origin, birth, minority, indigenous or other status, disability, sexual orientation or gender identity, or other status.¹¹³ Formal notification requirements for peaceful assemblies may discriminate against CHRDs who may not be aware of them and may not be in a position to comply with them.



Freedom of peaceful assembly and non-discrimination

The South African Constitutional Court, in *Mlungwana and Others v S and Another* [2018] ZACC found that the provisions of the Gatherings Act that a legal requirement to provide a formal notice of a protest discriminated against children: the criminalisation of children for the mere failure to give notice was unconstitutional. The court observed that children:

'who may not even know about the notice requirements in the Act or have the resources to adhere to the notice requirement – are indiscriminately held criminally liable if they fail to give notice before convening a gathering'.

<http://www.saflii.org/za/cases/ZACC/2018/45.html>

Effective implementation of Article 15 for CHRDs would ensure that national laws and policies guidance do not impose arbitrary age limits prohibiting children from taking part in peaceful assembly. States should also remove legislative obstacles to children's enjoyment of their rights, such as laws setting a lower age for organising or participating in peaceful assemblies, those requiring parental consent to join an association or an assembly, and those which allow the police to remove children who assemble peacefully in groups.¹¹⁴ The Special Rapporteur on freedom of peaceful assembly and of association acknowledges that, while there may be safety concerns when young people participate in some public demonstrations, 'a blanket ban on individuals of a certain age eliminates the right to participate in peaceful public assemblies for an entire portion of the population, without exception, contrary to Article 15.'¹¹⁵ The realization of children's right to freedom of peaceful assembly therefore necessitates a recognition of both children's capacities and vulnerabilities, such that States must facilitate their right and implement special measures to protect them.



The legality of a prohibition on minors taking part in public protest

The Moldovan government justified a ban on a peaceful protest in part because minors were in attendance, drawing on Article 15 of the CRC. In *Christian Democratic Party v Moldova* (Application no. 28793/02), the European Court of Human Rights said:

'Where the presence of children is concerned, the Court notes that it has not been established by the domestic courts that they were there as a result of any action or policy on the part of the applicant party. Since the gatherings were held in a public place anyone, including children, could attend. Moreover, in the Court's view, it was rather a matter of personal choice for the parents to decide whether to allow their children to attend those gatherings and it would appear to be contrary to the parents' and children's freedom of assembly to prevent them from attending such events which, it must be recalled, were to

protest against government policy on schooling. Accordingly, the Court is not satisfied that this reason was relevant and sufficient.'

<http://hudoc.echr.coe.int/eng?i=001-72346>

Schools also have a role to play in enabling the exercise of this right. They can support children through education about their rights and how to exercise them safely (see section 3.3). States should provide guidance to schools as to what constitutes a rights-respecting response to children who choose to take part in peaceful assemblies either in school or elsewhere. Educational authorities and institutions should consult with students to develop policies on participation in peaceful assemblies.

After the strike, the administration of a school from which several students came to strike gathered everyone from the school to threaten to expel the students who participated (or would like to) in strikes during school. They threatened with expelling or not admitting to the final exam. This got attention of the national public...

Schools should analyse with students their experiences with peaceful assemblies and support sharing the learning in the school.

Eastern Europe

States have a positive duty to actively protect assemblies that are peaceful, including protecting the participants against persons or groups that attempt to disrupt an assembly or carry out violent acts against the participants.¹¹⁶ This obligation also applies to children, but the CRC places additional obligations on States to ensure that children are protected from harm, whether they are taking part in an assembly of children or in an assembly among adults. Moreover, the right 'is protected even in the event of sporadic violence or the existence of criminal acts committed by other members of the group provided the person remains peaceful in his or her intentions or behaviour.'¹¹⁷ The Human Rights Committee has said that 'only law enforcement officials trained in the policing

of assemblies, including on the relevant human rights standards, should be deployed for that purpose. Training should sensitize officials to the specific needs of individuals or groups in situations of vulnerability, which may in some cases include women, children and persons with disabilities, when participating in peaceful assemblies.’¹¹⁸

In practice, concern about children’s safety often has the effect of overriding their rights to get involved in peaceful assemblies. Article 15 needs to be read in the context of other rights in the CRC and, in particular Article 5 (parents’ right to advise and guide in line with children’s evolving capacities); Article 3(1) (best interests as a primary consideration); Article 6 (life, survival and development) and Article 19 (protection from harm). Moreover, the Declaration States that:

DHRD



DHRD Article 12(2)

The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.

When there are concerns about safety, a default response by States actors might be to prevent children taking part whereas a rights-based response would be to see what could be done to ensure that children are able to exercise their civil and political rights and to make sure that children are safe when they do so (for example by taking part in an assembly). Moreover, when children are taking part, the police response should refrain from the use of methods of dispersal or containment that might endanger or have a disproportionately adverse impact on children (high frequency ultrasound devices, plastic bullets, teargas, tasers, etc.). Any forceful methods of crowd control should be strictly regulated and considered to be at the far end of a continuum.¹¹⁹ There are additional challenges when CHRDs are taking part in protests that are not ‘peaceful’, whether or not they begin that way.



Human Rights Handbook on Policing Assemblies from the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE/ODIHR)¹²⁰

The OSCE/ODIHR's Handbook provides guidance specific to children:

General Considerations: 'due to their smaller size, children may be more vulnerable in certain assembly contexts, and the police should take this into consideration when considering their operational options'.

Use of Force: wherever possible, force should not be used against children but if it is unavoidable, the level of force should be proportionate for the circumstances.

Crowd Management Officers: can 'Assist people in distress (e.g., in cases of accidents, lost children)'

Use of Weapons: any use of weapons may have a particularly harmful impact on certain vulnerable groups including, in particular, children and young people.

Use of Chemical Agents: there are certain contexts in which they should never be used. These include as a means of dispersing a peaceful assembly, where there are children or others who may have difficulty in moving away to avoid the chemicals, in confined spaces or in sports stadiums where exits are restricted and there is a danger of crush injuries.

Dispersal: the police should also aim to consider any specific issues relating to dispersal that may disproportionately impact the safety of children.

Containment: opportunities to exit the containment area should be available in particular to potentially vulnerable individuals, such as children.

<https://www.osce.org/odihr/226981>



Safeguarding and promoting the welfare of children by police

In *Castle and Others v Commissioner of Police for the Metropolis*, an English court accepted that there is a duty to have regard to the welfare of children (drawing on the CRC in its interpretation) - but did not find it breached on the facts in spite of containing children for several hours:

'We conclude that section 11 Children Act 2004 requires chief officers of police to carry out their functions in a way that takes into account the need to safeguard and promote the welfare of children.'

<http://www.crae.org.uk/media/33573/Castle-v-Commissioner-of-Police-of-the-Metropolis.pdf>

The Human Rights Committee has stressed that the onus is on the authorities to justify any restrictions and that the imposition of any restrictions should be guided by the objective of facilitating the right, rather than seeking unnecessary and disproportionate limitations. Restrictions must not be discriminatory, impair the essence of the right, or be aimed at discouraging participation in assemblies or causing a chilling effect.¹²¹ Prohibitions on CHRDs taking part in assemblies online or offline with a view to promoting human rights cannot be justified on the basis that it falls within any of the limitations repeated at Article 15(2) simply because the rights holders are under the age of 18. Any restrictions on the exercise of the right has to be justified with reference to the child's other rights (e.g. to be protected from harm or the right to education) or the rights of others (e.g. the enjoyment of the rights of other children in the context of a school). In all such instances, the interference with the child's right under Article 15 must be pursuing a legitimate aim, lawful, necessary and proportionate. Proposed justifications (e.g. that the police may not be equipped or trained to protect children) need to be assessed carefully to determine that they are necessary and proportionate.

3.5.4. Right to Privacy and Protection from Attacks on Reputation

CRC



CRC Article 16

(1) No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

(2) The child has the right to the protection of the law against such interference or attacks.

Article 16 repeats the wording of Article 17 of the ICCPR. However, it needs to be interpreted and applied with reference to children's other rights, in particular their right to guidance from parents (Article 5), to have their best interests as a primary consideration (Article 3(1), to have their views given due weight (Article 12) and to be protected from harm (Article 19). Moreover, what constitutes an interference with privacy and/or honour or reputation should also be interpreted in a way that includes an understanding of how issues of privacy and attacks on reputation play out in CHRDs' lives, including, in particular, in online media.¹²²

The right is usually abbreviated as 'the right to privacy' but it embraces a multitude of issues that are relevant to the work of HRDs. Moreover, it applies to activities both online and offline. These include forms of surveillance (including facial recognition systems and the use of biometric data), searches of the body and property, the use of handcuffs, passing of personal information, the interception and recording of communications and hacking/ spamming of CHRDs accounts (with threats, porn, etc). The right has also been interpreted to include respect for personal autonomy and development of personality as well as how an individual projects this, all of which is relevant for HRDs.¹²³

While all HRDs are entitled to protection from interference with their right to privacy, one factor that is distinctive for CHRDs is the role of parents: 'parents will be entitled to information about their children where it is necessary

and relevant for the purpose of ensuring that they are able to perform their obligations with respect to the care and development of their child (Articles 5, 18 and 27).¹²⁴ Even so, any **interference with the privacy (e.g. correspondence, emails, text and other social media messages) of the child by a parent should be exercised in line with the child's evolving capacities**, have the child's best interest as a primary consideration and take children's view into account.

A further distinguishing factor for many CHRDs is the fact that they will be attending schools and that the schools may be the focus of their human rights activity. Schools and teachers may have limited understanding that children continue to enjoy their right to privacy in the school environment and that any interference with it shall be lawful, necessary and proportionate. The right to be protected from attacks on honour and reputation is also pertinent for CHRDs, many of whom report personal abuse intended to undermine their integrity and damage their reputation. The provision needs to be interpreted in a child specific way. For example, **many CHRDs have reported being bullied, including cyber-bullied, for their HRD activities by other children in their school. Therefore, schools must have effective procedures for addressing this and must implement them.**

The child is entitled to the protection of the law against such interference or attacks. This places States under an obligation not to conduct such attacks themselves but also to do all that is reasonable to stop non-State actors from doing so. The media has a particular role to play here. States should ensure that there is **training for media professionals and codes of conduct that address the child's right to privacy**. States should ensure that the media, including social media, are required by law to protect children from any such attacks and to address violations in ways that can restore the child's reputation and honour.

3.5.5. Access to Information in the Media

CRC



CRC Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of Article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of Articles 13 and 18.

DHRD**DHRD Article 6**

Everyone has the right, individually and in association with others:

(a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems; (b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms.

DHRD Article 7

Everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.

Article 17 applies to the mass media, including radio, television, newspapers, magazines and all forms of social media, whether public or private. The right of access to such media is core to the work of HRDs and children enjoy a distinctive right in this context. 'While the rationale underpinning it is often considered to be protective or developmental, it is not limited to a protective focus and prioritizes the positive functions to be performed by mass media sources.'¹²⁵ Read alongside Articles 6 and 7 of the Declaration, it is clear that this includes information about their human rights and how they are given effect domestically. Article 17 is a relatively weak obligation (the States only has to 'encourage') and is strengthened by the Declaration in relation to information and resources that support the activity of CHRDs.

Article 17 includes a broad and distinctive set of obligations that could support the activity of CHRDs. For example, the 'dissemination of information of social benefit to the child' should include information that provides insights into current affairs on the issues that CHRDs are interested in (or may become interested in due to having received such information). The specific reference to international co-operation and access to material from a diversity of

sources in Article 17(b) underpins the requirement for children to have access to material on global issues many of which (such as climate change, migration) are the focus for many CHRDs.

For CHRDs, it is especially important that this includes accessible information on children's rights themselves, instead of an obligation that links to Article 29 (aims of education) and Article 42 (dissemination of the CRC) and is further underscored by Article 6 of the Declaration (above) and Article 14 of the Declaration which requires States to take measures 'to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights.' These measures include:

DHRD



DHRD Article 14

(a) The publication and widespread availability of national laws and regulations and of applicable basic international human rights instruments;

(b) Full and equal access to international documents in the field of human rights, including the periodic reports by the States to the bodies established by the international human rights treaties to which it is a party, as well as the official reports and recommendations of these bodies.

Article 17(d) places States under a specific obligation to encourage the mass media to make information accessible to children who use minority languages and/or are from indigenous communities. Article 17 encourages the mass media to protect children from information that is injurious to his/her well-being. This is generally targeted at inappropriate sexual and violent content and States should therefore encourage the mass media to protect all children from such harmful content, including CHRDs who may have such material targeted at them with a view to causing them distress in, for example, social media feeds. Children should be involved in any initiatives to develop policies or guidance and to make them accessible in line with Article 12 of the CRC.

The media also has an important role to play in ensuring that children get

access to accurate information and are not exposed to misinformation (so-called ‘fake news’). This type of information should also be considered ‘injurious to a child’s well-being’. Moreover, journalists and those who produce media content need to build their capacity and understanding about child rights so that they can promote a child rights perspective in their communications.

3.5.6. Civil and Political Rights: Summary of Implementation Measures



States should ensure that CHRD’s civil and political rights are protected in law and that any restrictions on the exercise of these rights by children are lawful, necessary, proportionate and non-discriminatory.



States should ensure that any processes that may lead to restrictions on children’s exercise of their civil and political rights seek children’s views and give them due weight and are transparent and accessible to children. Justifications for any restrictions must be rights-based and proactively explained to children in a child-friendly manner.



Information on the potential risks involved in acting as a CHRD should be provided to children in an accessible and child-friendly manner so they can make informed choices and navigate in the balancing of rights.



States should develop direct relationships with CHRDs, creating space and opportunities for CHRDs to engage with politicians and policy makers.



States should ensure that all CHRDs enjoy access, without discrimination, to information online and offline.



States should provide parenting education and adopt and implement public awareness strategies that support understanding that children have rights to seek, receive and impart information,

form and hold opinions, express their views, form and join association and take part in peaceful assemblies.



Police forces, educators and other professionals that work with children should be trained in children's rights and develop policies, taking into account the views of CHRDs that enable children to exercise their civil and political rights safely.



States should ensure that CHRDs enjoy their right to privacy and protection from attacks on their reputation.



The media should provide children, including CHRDs, with appropriate and accurate information on matters affecting them, including issues related to their rights.



The media, and media regulators, should develop policies and guidelines, in consultation with CHRDs, that protect children's civil and political rights online and offline.



States should support and not restrict or prohibit the activity of civil society organizations and others who are supporting children to exercise their civil and political rights and act as CHRDs.

4. Child-Friendly Justice: Monitoring, Redress, Remedies

There is a wide range of national and international actors that monitor the situation of HRDs, promote or implement preventative measures, and support HRDs to seek remedies or redress for breaches of their rights. Access to remedies and redress not only is important to render justice to the victims, but also because it can lead to jurisprudence that can help improve the implementation of the rights of CHRDs. This is particularly important as there is a lack of jurisprudence on the civil and political rights and on CHRDs. However, to date, few national or international actors, including those who work specifically with children or with CHRDs have paid attention to the distinct needs and challenges of CHRDs in terms of access to support, redress and remedies. First CHRDs may not be aware of the existence of institutions and organizations that can provide support and assistance and that places an onus on those entities to ensure that the services they provide are publicized widely in ways that will reach all children. Secondly, children must be able to access the support, remedies and redress provided. That will require such institutions and organizations **to communicate in child-friendly language and, where necessary, provide financial assistance and independent representation**. An additional challenge in many contexts is that **children often do not have the legal standing** to initiate or take action independently or in their own name. Finally, given that children are still developing and that there are immediate obligations regarding their protection from harm, there is an additional need to **provide remedies that are prompt and that promote transformative reparations and guarantees of non-repetition**. All of these issues need to be considered and addressed by national and international institutions and organizations so that they **provide a safe, accessible and enabling environment for CHRDs**.

4.1. National Human Rights Institutions

DHRD



DHRD Article 14(3)

The States shall ensure and support, where appropriate, the creation and development of further independent national institutions for the promotion and protection of human rights and fundamental freedoms in all territory under its jurisdiction, whether they be ombudsmen, human rights commissions or any other form of national institution.

The Committee has consistently encouraged States to develop or strengthen the capacity of NHRIs to include a specific focus on children (whether that be through an institution dedicated to children or through a work stream focused on children within an NHRI).¹²⁶ It has identified a series of reasons why children should get special attention in an NHRI, including the following: ‘children’s developmental states makes them particularly vulnerable to human rights violations; their opinions are still rarely taken into account; most children have no vote and cannot play a meaningful role in the political process that determines Governments’ response to human rights; children encounter significant problems in using the judicial system to protect their rights or to seek remedies for violations of their rights; and children’s access to organizations that may protect their rights is generally limited.’¹²⁷ Each of these justifications are especially relevant for CHRDs and it is important therefore that there is an NHRI which understands the rights and needs of CHRDs, provides accessible protection and remedies and which supports their activity. It has been recommended that an NHRI should: ‘publicly position itself as a child rights actor, by including a child rights perspective in its public statements and publications.’¹²⁸ Moreover, the Paris Principles require NHRIs to ‘develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (*especially children*).’¹²⁹ This should include child-led organizations as well as civil society organizations working with and for children.

All NHRIs, irrespective of whether their work is dedicated to children or not, should be accessible to all human rights holders, including children. However, it is particularly important that children are able to access an NHRI that has a specific role and expertise in protecting the rights of children when they are seeking to enforce their own rights (whether as an individual or a group). One key aspect of this is providing accessible material to children that will enable them to understand their rights and how to access them. The Paris Principles require that NHRIs ‘assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles.’ As part of this **NHRIs should familiarize children and professionals who work with them with the definition of HRDs and should support them to understand their rights as CHRDs or obligations as duty-bearers.** For example the Scottish Children’s Commissioner has developed the first child-friendly version of the Declaration.¹³⁰ DGD2018 recommended that NHRIs should disseminate information about their work to CHRDs; work more closely with CHRDs; and support them to report on and seek redress for human rights violations.¹³¹ This applies to child specific institutions such as Children’s Ombudspersons and Commissioners as well as NHRIs with a general remit.

NHRIs should have the power to consider individual complaints and petitions and carry out investigations, including those submitted on behalf of or directly by children.¹³² This should include the powers to compel and question witnesses, access relevant documentary evidence and access places of detention. They should seek to ensure that children have effective remedies - independent advice, advocacy and complaints procedures - for any breaches of their rights. Where appropriate, NHRIs should undertake mediation and conciliation of complaints. Finally, NHRIs should have the power to support children taking cases to court, including the power (a) to take cases concerning children’s issues in the name of the NHRI and (b) to intervene in court cases to inform the court about the human rights issues involved in the case.¹³³

4.2. Right To A Remedy At The National Level

ICCPR



ICCPR Article 2(3)

Each State Party to the present Covenant undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted.

DHRD



DHRD Article 9

- (1) In the exercise of human rights and fundamental freedoms, including the promotion and protection of human rights as referred to in the present Declaration; everyone has the right, individually and in association with others, to benefit from an effective remedy and to be protected in the event of the violation of those rights.
- (2) To this end, everyone whose rights or freedoms are allegedly violated has the right, either in person or through legally authorized representation, to complain to and have that complaint promptly reviewed in a public hearing before an independent, impartial and competent judicial or other authority established by law and to obtain from such an authority a decision, in accordance with law, providing redress, including any compensation due, where there

has been a violation of that person's rights or freedoms, as well as enforcement of the eventual decision and award, all without undue delay.

(3) To the same end, everyone has the right, individually and in association with others, *inter alia*:

(a) To complain about the policies and actions of individual officials and governmental bodies with regard to violations of human rights and fundamental freedoms, by petition or other appropriate means, to competent domestic judicial, administrative or legislative authorities or any other competent authority provided for by the legal system of the States, which should render their decision on the complaint without undue delay;

(b) To attend public hearings, proceedings and trials so as to form an opinion on their compliance with national law and applicable international obligations and commitments; ...

(5) The States shall conduct a prompt and impartial investigation or ensure that an inquiry takes place whenever there is reasonable ground to believe that a violation of human rights and fundamental freedoms has occurred in any territory under its jurisdiction.

Article 9 of the Declaration sets out what is required in order for all HRDs to have access to a remedy at the national level. The Committee has emphasized that: 'For rights to have meaning, effective remedies must be available to redress violations.'¹³⁴ The protections do not change for children but what might be required to implement them in practice will be different. For example, children's access to justice is often dependent upon adults informing them about the

existence of a means of redress and enabling them to access it. It is important that children have an independent right to seek a remedy and that their views are sought and taken seriously across the process, directly if possible and, where appropriate through independent representation (Article 12(2) CRC). The Committee has said that ‘Children’s special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights. So States need to give particular attention to ensuring that there are effective, child-sensitive procedures available to children and their representatives. These should include the provision of child-friendly information, advice, advocacy, including support for self-advocacy, and access to independent complaints procedures and to the courts with necessary legal and other assistance. Where rights are found to have been breached, there should be appropriate reparation, including compensation, and, where needed, measures to promote physical and psychological recovery, rehabilitation and reintegration, as required by Article 39.”¹³⁵

Article 9(5) of the Declaration states that investigations should be ‘prompt’ and while this is important always, it is especially significant for children whose development is changing rapidly.



Child Friendly Justice Guidelines

The Council of Europe’s Committee of Ministers has identified the following key aspects of child-friendly justice: accessible; age appropriate; speedy; diligent; adapted to and focused on the needs of the child; respecting the right to due process; respecting the right to participate in and to understand the proceedings; respecting the right to private and family life; and respecting the right to integrity and dignity.

<https://www.coe.int/en/web/children/child-friendly-justice>

4.3. Arrest, Detention and Criminal and Administrative Sanctions

CRC

CRC Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action

CHRDs should not be arrested or detained solely for the exercise of their human rights and for HRD activity. However, as is the case with many other HRDs, the reality is that children are arrested and detained, charged with criminal offences and/ or subject to administrative sanctions. While all HRDs have a right to a fair and prompt process, the CRC provides specific obligations on States in relation to children in Article 37. It expands the 'corpus of international law by demanding a prohibition on life imprisonment without the possibility of release, by requiring that the detention of a child must be a measure of last resort and for the shortest appropriate period of time, and that a child has a right to maintain family contact whilst deprived of his or her liberty.'¹³⁶ The UN Global Study on Children Deprived of Liberty has called for the end of all detention of children, asserting that deprivation of liberty is deprivation of childhood.¹³⁷

4.4. Engagement with International Bodies

DHRD



DHRD Article 9(4)

... in accordance with applicable international instruments and procedures, everyone has the right, individually and in association with others, to unhindered access to and communication with international bodies with general or special competence to receive and consider communications on matters of human rights and fundamental freedoms.

4.4.1. The United Nations

When children engage with the United Nations (UN) and in particular, the UN human rights mechanisms, they are acting to promote or protect human rights as their actions are aimed at better implementation of international human rights norms and standards. These children are HRDs and should be recognized and treated as such by the UN and its Member States. States should support the work of CHRDs at the UN in a number of ways, including by creating and expanding safe spaces for children to speak up and by empowering them to monitor and report on the implementation of the international human rights norms and standards.

DGD2018 recommended that the UN provide CHRDs with information that enables them to effectively engage with its human rights mechanisms and promote the participation of CHRDs in its work related to children's rights, putting in place child-friendly platforms and processes to facilitate children's in-person or virtual engagement. The UN human rights mechanisms should also develop and advance the standards on the protection and empowerment of CHRDs by making recommendations and providing technical assistance to Member States.

4.4.2. The Committee on the Rights of the Child

"30 years of experience showed that children's engagement in the CRC Reporting is one of the most powerful ways to empower children human rights defenders to advance the realization of children's rights through monitoring, reporting and advocacy."¹³⁸

Luis Pedernera, Chair of the Committee on the Rights of the Child

The Committee is the key expert monitoring body and accountability mechanism for children's rights. It is mandated to monitor and assess how States parties to the CRC, and its Optional Protocols promote and protect the rights of CHRDs under the CRC and its Optional Protocols. Through the DGD2018, the Committee has started specifically recognizing the role of CHRDs and providing guidance and standards on the implementation of their rights in their recommendations to States.



Concluding Observations: Guinea

*'The Committee reminds the State party that human rights defenders, particularly child human rights defenders, deserve protection as their work is crucial for the promotion of human rights for all, including for children, and thus urges the State party to adopt and implement the draft law on the promotion and protection of human rights defenders that was presented to the Minister of National Unity and Citizenship by civil society in December 2018, while ensuring that the needs of child human rights defenders are addressed.'*¹³⁹

The Committee has been at the forefront of initiatives to involve CHRDs in its activities and has issued detailed guidance on the involvement of children in periodic reporting procedures¹⁴⁰ and participation in DGDs.¹⁴¹ It clarified that States have an obligation to engage children in the preparation of the State reports to the Committee and that they should support children to prepare their own alternative report.

The Committee meets with children during its meetings of pre-sessional working groups, encourages their participation in different activities, provides child-friendly information through a dedicated webpage¹⁴² and regularly reviews its own practice.

The Committee also has made it a standard that there is consultation with children in the development of the General Comments and developed good practices accordingly. Children's views have been referenced directly in the most recent General Comments.



Listening to Children in the Development of General Comments

The Committee's General Comment No.19 on public spending was informed by a global consultation with 2,693 children from 71 countries, conducted via an online survey, focus groups and regional consultations in Asia, Europe and Latin America. The consultation included contributions from boys and girls of different backgrounds in terms of age, gender, ability, socioeconomic context, language, ethnicity, school enrolment, displacement and experience of child-participatory budgeting. The process was a unique opportunity to empower children to act as HRDs and conduct advocacy on the issue of child rights resources in their countries.

Children can also submit individual communications to the Committee under the Third Optional Protocol to the CRC on an Individual Communications Procedure (OPIC).¹⁴³ Ratification of the OPIC not only provides CHRDs with an accessible international mechanism, including child-sensitive procedures, that complies with Article 9(4) of the Declaration. It also has an **important normative value, providing an unequivocal statement that States recognize that children are entitled to seek remedies for violations of their own human rights**. CHRDs who experience violations of their rights under the CRC and its Optional Protocols outlined in this Guide can send a communication to the Committee on the Rights of the Child, if the violating State (which may not be the State in which the child lives) has ratified the OPIC and if the case meets the admissibility requirements. While the full range and detail of rights for children set out in the CRC will be the most powerful instrument for CHRDs, they can also use the individual communication mechanisms established under other international human rights instruments to pursue many of their rights under those instruments, if their State (the violating State) has ratified those instruments.

However, there is still room for increasing children's access to the Committee, as highlighted by the DGD2018 recommendation: 'The Committee should continue to expand the channels of communications with child human rights defenders and make additional efforts to ensure that its reporting process is accessible to all children, including those from marginalized groups.'

The Committee should also strengthen its safeguarding procedures and more actively promote the mainstreaming of the rights of CHRDs, child participation and safeguarding within the broader UN system.

4.4.3. The Special Rapporteur on Human Rights Defenders

The Special Rapporteur on the situation of human rights defenders is the key expert of the UN that specifically promotes the effective implementation of the Declaration on Human Rights Defenders. The Special Rapporteur has developed a collaboration with the Committee by actively engaging in the DGD2018, which is reflected in the final recommendations, including as follows: 'The Committee should strengthen its cooperation with the

Special Rapporteur on the Situation of Human Rights Defenders in providing guidance to States on how to integrate the protection and empowerment of child human rights defenders into national legislation and policy.¹⁴⁴

Since the DGD2018, the Special Rapporteur has met with children during country visits and to review the particular situation of CHRDs both in global, thematic and country reports. The 2019 country reports on Moldova and Mongolia explicitly refer to the specificities of the situation of CHRDs. The report on Mongolia introduces children and young HRDs as a specific group of defenders at risk and needing special protection.¹⁴⁵ The impact of children's involvement in the Special Rapporteur's visit to Mongolia went beyond influencing the visit's final recommendations. The experience encouraged the children involved to undertake advocacy at the national and international levels on their rights as defenders. The children provided technical inputs to the government on the draft law on the protection of HRDs, thus becoming the first ever group of CHRDs to directly implement the DGD2018's recommendation: 'States should develop and adopt comprehensive national laws and policies on protection and empowerment of human rights defenders, including children human rights defenders.'¹⁴⁶

4.4.4. Other Human Rights Treaty Bodies

CHRDs can engage with other Human Rights Treaty Bodies if their States have ratified their corresponding treaties. States should empower children to do so, as the engagement with other Treaty Bodies provides an opportunity for children to gain wider understanding of their human rights and the UN human rights mechanisms, as well as additional leverage for their actions as HRDs. It can also strengthen the international human rights standards related to their rights. All Treaty Bodies should make their periodic reporting and communications procedures accessible to children, drawing on the experience of the Committee. While this is beginning to happen to a much greater extent than before, there is considerable scope for other Treaty Bodies to work with CHRDs to make their work more accessible and relevant to children.



Promoting child participation in Human Rights Committee processes

In 2020, Child Rights Connect collaborated with the Human Rights Committee – the Treaty Body mandated to monitor the implementation of the ICCPR – to gather children’s views on the Committee’s General Comment No. 37 on peaceful assembly. With an increasing number of children taking part in peaceful protests around the world, most notably in strikes against climate change, Child Rights Connect sought to ensure that children could share with the UN what the right to peaceful assembly means to them and what barriers they face in exercising this right. Through a survey, Child Rights Connect heard from 91 children, aged 10-18 years old, from 15 different countries, across five regions (East Asia and Pacific, Latin America and Caribbean, Sub-Saharan Africa, Europe and Central Asia, Middle East and North Africa). Their voices informed our submission to the UN.

4.4.5. Human Rights Council Special Procedures and Universal Periodic Review

The UN Human Rights Council has established human rights mechanisms such as Special Procedures and the Universal Periodic Review that are an important means through which CHRDs can communicate concerns and advocate for children’s rights.

Special Procedures include Special Rapporteurs, Independent Experts or Working Groups that monitor, advise and publicly report on human rights situations in specific territories or on thematic issues. Many of them work on issues that are very relevant to CHRDs (such as the environment, indigenous peoples, disability, the sale of children, freedom of expression, assembly and association). They can be unique mechanisms to promote the enjoyment of human rights by CHRDs and to provide a venue for CHRDs to seek support

in preventing and addressing human rights violations. In order for these mechanisms to be effective, all Special Procedures should be accessible to all HRDs, including children. This will involve developing child participation and child safeguarding procedures, including by: enabling children to submit communications; consulting with children directly on matters affecting them when conducting research and consultations; meeting with CHRDs during country visits; or providing CHRDs with age-appropriate and timely information in a language and format they can understand (e.g. producing child-friendly versions of reports).



Special procedures' engagement with children

The Special Rapporteur on Human Rights and the Environment developed a child friendly version of his report on Children's Rights and the Environment (available in all UN languages) and has supported a series of regional consultations with children as part of the Children's Environmental Rights Initiative.

<https://www.ohchr.org/en/issues/environment/srenvironment/pages/environmentandrightschild.aspx>

Universal Periodic Review (UPR) is an important mechanism to advance the rights of CHRDs. Although the UPR is an intergovernmental review mechanism of the overall human rights situation of all UN Member States by all UN Member States, it provides for the opportunity to civil society, including CHRDs, to contribute to the process at different stages and in different ways in order to share information about the countries under review. It has been an increasing practice for CHRDs to participate in the UPR process by sending child-led reports or participating in the pre-sessions, practices which further enhance visibility of CHRDs and mainstream children's rights.

Both States and civil society have a role in ensuring that the views of CHRDs are heard in the process, through both the State report and the stakeholder report, and in engaging them in the implementation phase of the UPR recommendations.

4.4.6. Special Representative of the Secretary-General on Violence against Children and the Special Representative of the Secretary-General for Children and Armed Conflict

Both the Special Representative of the Secretary-General on Violence against Children (SRSG VAC) and the Special Representative of the Secretary-General for Children and Armed Conflict (SRSG CAAC), as independent global advocates leading in the protection and well-being of children in their respective fields, play a role in advancing the rights of CHRDs and providing a platform to amplify their voices. Both SRSGs play a bridging role among stakeholders and work closely with civil society, including children, in their work when developing reports, providing technical assistance or in country visits. Good practices are being developed.¹⁴⁷

4.4.7. Other United Nations Opportunities

The UN Secretariat and UN agencies and programmes are developing mechanisms to prevent cases of reprisals against HRDs as well as to ensure protection, remedies and accountability for victims of reprisals. In 2017, the Assistant Secretary-General for Human Rights was designated as the UN senior official to lead efforts towards a more comprehensive and coordinated UN system-wide response with the support of the OHCHR's reprisals team. A specific email address is available (reprisals@ohchr.org) whereby the UN and its partners, including civil society organizations and victims and their family members, may submit information on acts of intimidation and reprisals. Another example is the United Nations Environmental Programme's Defenders Policy to promote greater protection for individuals and groups who are defending their environmental rights, and provide solutions to mitigate the abuse of environmental rights which affects a growing number of people in many parts of the world.¹⁴⁸ Even though work still needs to be done to ensure that the UN has mechanisms in place that are child-sensitive and accessible to CHRDs, CHRDs should be supported in making use of these various mechanisms.

4.4.8. Regional Human Rights Mechanisms

Regional human rights bodies and complaints mechanisms can make a significant contribution to the work of CHRDs.

The African Union has a Special Rapporteur on HRDs. The European Union and the Inter-American Commission on Human Rights have Commissioners on HRDs and have, for example, produced guidance on support for HRDs.¹⁴⁹ While the latter do not address children as HRDs specifically, many of the recommendations (such as facilitating meetings and enhancing visibility as well as advocating for support mechanisms that protect family members) would benefit CHRDs considerably. Guidance should be revised or supplemented to address the specific rights and distinctive experiences of CHRDs. The OSCE/ ODIHR's guidance on protecting the rights of HRDs, for example, makes a number of explicit references to children, including the following: 'Public protection policies and programmes should also take into account the specific challenges and needs of other categories of human rights defenders, including youth and children human rights defenders,' and 'Youth human rights defenders, including children, are often portrayed as being too young to have an opinion and are denied the right to express their views.'¹⁵⁰ Further guidance, drawing on this Implementation Guide, should reinforce the fact that children are HRDs and expand on the implications of this in practice. It could also be of a collective nature to prevent harm to children due to their association with an organization, a group, or a community with identified or identifiable members.

4.5 Child-Friendly Justice: Summary of Implementation Measures



States should consider and address the particular needs of CHRDs when planning or providing mechanisms for redress and remedies for violations.



All institutions and organizations, national or international, should acknowledge and address the particular needs of CHRDs and enable children to access justice promptly.



States and others should consult with children at all stages when mechanisms which provide access to justice are developed or evaluated.

5. Implementing a Rights-Based Approach for CHRDs (Art. 4 CRC and Art. 2 DHRD)

Realizing children's rights, especially those of CHRDs, requires measures of implementation to be appropriate for children and their rights, accessible to children and capable of involving them meaningfully. Moreover, implementation for rights-holders who are children faces additional challenges given their status in society, lack of political power, frequent dependence on adults for access to accountability mechanisms and more generally a resistance to the idea that children have rights and should be facilitated to claim them.

CRC



CRC Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

DHRD



DHRD Article 2

(1) Each States has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, *inter alia*, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.

(2) Each States shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed.

Article 4 of the CRC is similar to implementation clauses in other human rights instruments (which, of course, also apply to children). However, the Committee has emphasized that in the context of the CRC, 'States must see their role as fulfilling clear legal obligations to each and every child. Implementation of the human rights of children must not be seen as a charitable process, bestowing favours on children.'¹⁵¹ It has given detailed guidance on the implementation of the Convention in General Comment No. 5 on General Measures of Implementation.

The CRC has a number of provisions, in addition to Article 4, which support implementation. However, the Declaration supplements understanding of what is needed to ensure the effective empowerment and protection of HRDs. Read together, the **CRC and Declaration combine to provide a roadmap for protecting, respecting and fulfilling the rights of children who are HRDs.**

5.1. Law and Policy (Art. 3, 9 DHRD)

DHRD



DHRD Article 3

Domestic law consistent with the Charter of the United Nations and other international obligations of the States in the field of human rights and fundamental freedoms is the juridical framework within which human rights and fundamental freedoms should be implemented and enjoyed and within which all activities referred to in the present Declaration for the promotion, protection and effective realization of those rights and freedoms should be conducted.

Article 3 of the Declaration supplements Article 4 of the CRC by reasserting the need for domestic laws to be consistent with the State's international obligations. States that have incorporated the CRC into domestic law tend to have greater respect for children's rights generally and that provides an environment that is more conducive for CHRDs.¹⁵² While there is no one right way to do this, **States should take measures to ensure that domestic law is consistent with the CRC and the Declaration.** This might take the form of a comprehensive law on HRDs that incorporates children's rights (throughout or in a separate sections) and/or ensuring children's rights are integrated into relevant sectoral laws. Whichever approach is adopted, domestic law must comply with the State's obligations to children under the CRC. DGD2018 recommended that:

- States develop and adopt comprehensive **national laws and policies on protection and empowerment of HRDs** that integrate a gender and age sensitive approach with special attention to children in situations of risk.
- States should ensure that the **national legal framework complies with the CRC** and allows children to act freely as HRDs (so should comply with the Declaration).
- National legislation should be built upon and include the views of CHRDs.
- States should ensure the effective implementation of legislation and policies for CHRDs, **by allocating the necessary human, technical and financial resources.**¹⁵³



Laws and Policies for CHRDs: Suggested Minimum Elements

All national laws and policies relevant to the rights of CHRDs, consistent with international obligations, should have the following features:

- No minimum age;
- Applies to all children;
- Best interests are a primary consideration;

- Includes a right to be heard;
- Parents/guardians' rights and duties included;
- Provision of age-appropriate support to CHRDs and their parents/legal guardians;
- Provision of heightened protection for all HRDs under 18, and children in situations of risk;
- Age-sensitive procedures for reporting and redress mechanisms;
- CHRDs are consulted during the drafting process.

5.1.1. Children's Rights Impact Assessments

The Committee has recommended that all States should adopt Children's Rights Impact Assessments (CRIAs) and should do so 'in a way which further promotes the visible integration of children in policy-making and sensitivity to their rights.'¹⁵⁴ While policy impact assessments or proofing on issues such as gender, the environment, health, and across equality are now relatively common, children and their rights can become lost in these processes.¹⁵⁵ This is evidenced by the fact that, at the time of writing, all the existing laws and policies specific to HRDs are adult-centred and addressing the rights of CHRDs in a limited manner or not at all. CRIAs encourage decision-makers to put a specific gaze on children and their rights and to identify any disproportionate impact on children.

CRIAs provide a mechanism for highlighting the particular impact on the rights of CHRDs in laws and policies that are not specific to children. The CRIA process should also involve children and provide an opportunity for CHRDs (a) to impact law and policy and (b) to identify issues that may adversely impact on children's capacity to act as HRDs.

5.2. Data Collection and Monitoring

The DGD2018 highlighted the fact that there is limited data on the lived experience of CHRDs and on violations of their rights, partly due to the lack of awareness and understanding of CHRDs' rights and partly due to the fact

that relevant data is not collected through the CHRDS lens and disaggregated by age. Many stakeholders do not consider children as HRDs: data collection on HRDs focuses on adults and/or youth and data collection on children does not focus on their activity as CHRDS. CHRDS are rendered invisible.

Indicators and data collection mechanisms focused on the rights of CHRDS are needed to help children and all other relevant stakeholders (States, civil society, NHRIs, Children's Ombudspersons, UN and regional human rights mechanisms, inter-governmental monitoring bodies) collect data, monitor and report on the realization of the rights of CHRDS. This can also provide an opportunity to document and share good practice. Data should be disaggregated (by gender, disability, ethnicity, etc) so that the impact on particular CHRDS can be monitored. CHRDS themselves should be given opportunities to conduct their own data gathering and to contribute to other studies. It is also important that data collection processes and data sources are not misused and do not, in particular, expose CHRDS to harm such as reprisals.

5.3. Public Awareness and Training for Professionals

CRC



CRC Article 42

Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

DHRD



DHRD Article 15

The State has the responsibility to promote and facilitate the teaching of human rights and fundamental freedoms at all levels of education and to ensure that all those responsible for training lawyers, law enforcement officers, the personnel of the armed forces and public officials include appropriate elements of human rights teaching in their training programme.

DHRD Article 16

Individuals, non-governmental organizations and relevant institutions have an important role to play in contributing to making the public more aware of questions relating to all human rights and fundamental freedoms through activities such as education, training and research in these areas to strengthen further, inter alia, understanding, tolerance, peace and friendly relations among nations and among all racial and religious groups, bearing in mind the various backgrounds of the societies and communities in which they carry out their activities.

States are under a general obligation to promote public awareness of human rights among the general public and a specific obligation to promote awareness of the CRC and thus children's rights. Articles 15 and 16 of the Declaration underline the need for human rights education and training to enable the work of all HRDs. The importance of public awareness strategies, including for parents, along with specific training for professionals such as teachers and the police cannot be understated for CHRDs, many of whom report resistance to their activities from non-State actors. The barriers which result from this can take a number of forms: **reluctance to accept that children have rights; reluctance to accept that children can or should act as HRDs; and a lack of awareness of the scope or nature of children's human rights which results in adults adopting positions that emphasize protection rather than empowerment.** Schools and NHRIs have a significant role to play in promoting understanding and awareness of children's human rights with children, parents, professional who work with children and the public (see sections 3.3 and 4.1). However, it should not be left to them alone.



Statutory Duty to Promote Knowledge of the Convention

Under the Rights of Children and Young Persons (Wales) Measure 2011, Welsh Ministers must take such steps as are appropriate to promote knowledge and understanding amongst the public (including children) of the Convention and the Protocols.

<https://www.legislation.gov.uk/mwa/2011/2/contents>

5.4. Access to Resources

DHRD



DHRD Article 13

Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration.

Many CHRDs rely on local, national and international civil society organizations for support for their activity. However, there is increasing concern about a lack of funding for civil society organizations and for children's organizations in particular. Moreover, funding for children is more likely to be given for specific projects and protection rather than for initiatives designed to support their activity as HRDs. Funding for protection and funding for HRDs activities must be available to children. The ability to seek and receive resources for human rights activity is especially important for CHRDs who may find it difficult to form their own organizations and to seek and receive money because they are children. States should also ensure that children are able to access and take part in civil society organizations and that these organizations are not prohibited from seeking and receiving funding nationally and internationally.

5.5. Civil Society

Children are civil society actors and have a right to form their own associations and to join associations (see section 3.6.3). Children play a key role in the civic and democratic space, especially in the digital space by bridging the inter-generational gap and contributing to joint solutions. Very often the actions that children take as civic actors are the ones that make them HRDs. However, the role played by children as civic actors is under-recognized, as it is their role as HRDs. States should take every opportunity to support diversity of civil society participation at the national, regional and international levels, with particular emphasis on underrepresented parts of civil society, including children.¹⁵⁶

Adult led organizations must also be able to form and provide support for both

HRDs and CHRDs. Children's empowerment will be restricted and their safety and security will be at risk if there is a negative view about human rights work and if adult HRDs face attacks, arrests, and detention. Many CHRDs will work through civil society organizations, many of whom have significant expertise and experience in creating accessible spaces for CHRDs, supporting them in their activities, and advocating for States to do more to engage with CHRDs. Civil society organisations can provide important support to CHRDs who are disappointed with the outcomes of their activity, providing them with on-going support and advice. States should also provide specific support, including financial support, for child-led organizations and peer-to-peer activities that empower CHRDs, and foster a safe and enabling environment for CHRDs. This should include support for local, national, regional and international events and meetings.

6. Conclusion

The activities and rights of CHRDs have been, for the most part, ignored and marginalized by States, the public and national and international human rights and civil society organizations. Children have not been waiting for this recognition. Many children across the world have been acting to promote and protect human rights, shaping and defining understanding of human rights norms and implementation. CHRDs have been getting on with their work, even though their own rights as HRDs have not been understood and/or accepted. Child specific and HRDs specific organizations, programmes and guidance have, until recently, failed to acknowledge or address the distinct rights and needs of children who act as HRDs. There has also been limited recognition of the fact that CHRDs are not a homogenous group and that the challenges faced by them are often compounded when they are girls, have a disability or are from an ethnic minority or indigenous community.

This Implementation Guide aims to fill this gap. It identifies what is distinctive about CHRDs themselves, the contexts in which they act and the rights to which they are entitled. From this analysis, it has emerged that the rights of children who act as HRDs are not well known or understood. In particular, it is apparent that children's exercise of their civil and political rights, crucial for all HRDs, is often limited in circumstances where the reasons for restrictions are not transparent and where children are not involved in the decision-making and/or do not receive information justifying or explaining them. Moreover, there is a misconception that CHRDs' civil and political rights can be outweighed by their other rights such as the right to education or to be protected from harm. The latter in particular is often equated with the best interests principle, with the effect that children are prohibited from acting. This Guide emphasizes that it is also in children's best interests to be enabled to exercise their civil and political rights and that the obligation is on States to ensure that they can do so safely. **Prohibiting children from acting as CHRDs should not be the default position when there are adult concerns about children's activity. While the obligation to protect CHRDs from harm is immediate and crucial, it should not be implemented at the expense of children's enjoyment of their full range of human rights.**

The Implementation Guide provides recommendations for States, parents/guardians, schools and other public service providers as well as national and international human rights organizations. In all cases, the intention is to support them and CHRDs to understand the rights that children should enjoy and to work with children to ensure that they are implemented in ways that are not just effective but understood and supported by CHRDs. The consultations on the Guide have highlighted the need for practical guidance to be developed based on the Guide, in particular around the following areas: restrictions on rights, policing protests, online activity, participation in public life, enabling CHRDs through education, promoting permissive and protective parenting, child-sensitive responses by protection mechanisms, girl CHRDs, CHRDs with disabilities, and other groups of CHRDs in vulnerable situations. This is key to further advance the understanding of what should be done in practice. CHRDs will play a key role in developing this practical guidance.

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