

Law and Violence Against Children

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The subject of law and violence against children is complex: children experience many kinds of violence, and legislation is relevant to VAC in many ways. International organizations use different definitions of VAC and related concepts, such as child abuse and maltreatment.¹ Part I of this article discusses these definitions. Part II analyses the obligations concerning law and VAC recognized by international human rights law. Part III reviews the recommendations concerning law made by the United Nations Study on Violence Against Children and subsequent UNICEF and UN strategies regarding VAC, and indicators for monitoring their implementation. Part IV addresses the impact of law on VAC, and part V contains conclusions and recommendations.

I. Definitions of VAC

The United Nations Study on Violence Against Children (UN Study) states: “The definition of violence is that of article 19 of the Convention: ‘all forms of physical or mental violence, injury and abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse’.”² This definition is widely cited, but unsustainable. Article 19 recognizes an obligation to take measures to protect children from a series of phenomena, one of which is violence, whether physical or mental. As a simple matter of grammar, the commas mean that the items listed are separate items, not mere examples of the first item in the list. The use of the list contained in this article as a definition of violence also is difficult to reconcile with the first rule of treaty interpretation: “A treaty shall be interpreted in good faith *in accordance with the ordinary meaning to be given to the terms of the treaty* in their context and in the light of its object and purpose.”³ The ordinary meaning of the word violence is “behaviour involving physical force intended to hurt, damage or kill”.⁴ The ordinary meaning of exploitation is the use of a person in a way that is unfair, and the ordinary meaning of neglect is “fail to care for properly”.⁵ The point is not that a dictionary definition of violence should be taken as the definitive meaning of this term in the Convention on the Rights of the Child (CRC), but rather that the normal meanings of violence, exploitation and neglect are quite different.

There is no substantive reason to take the position that neglect and exploitation are forms of violence, since article 19 establishes the same obligation regarding violence, exploitation and neglect. The author the UN Study may have adopted this definition in order to give a broad interpretation to his mandate.⁶ National authorities also may have valid reasons to adopt policies, programs or laws that address VAC and exploitation and/or neglect, but this can be done without conflating these concepts with violence. The term violence – like torture – has strong moral or emotional connotations, which may make it attractive for advocates wishing to mobilize against a broad range of child rights violations. This does not seem sufficient reason to ignore the different meanings of violence, exploitation and neglect in other contexts, such as legislation and monitoring respect for the rights of children.

Definitions of VAC in national data management systems vary widely.⁷ Recent reports to a regional database show that indicators on VAC include abandonment, “economic abuse”, and various kinds of

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¹ This article focuses on inter-personal violence, not self-injury or collective violence, e.g. armed conflict, genocide, and gang violence. See Krug E.G. et al., eds. *World Report on Violence and Health*, Geneva, WHO, 2002, p.215

² Report of the independent expert for the UN Study on Violence Against Children, A/61/299, para.8. The Convention referred to is the Convention on the Rights of the Child.

³ Vienna Convention on the Law of Treaties, Art.31.1, emphasis added

⁴ *The New Oxford Dictionary of English* (2001), Oxford University Press, Oxford, p.2063

⁵ *Id.*, pp.648 and 1240

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⁷ Such definitions often are based largely on criminal and/or family law.

exploitation, including child labour and exploitation for the commission of crime.⁸ The use of overbroad definitions of violence can distort data on VAC, especially in countries where there are established programs for the elimination of forms of exploitation such as trafficking and child labour, or harmful practices such as child marriage.

The UN Study also states that it “draws on the definition in the World Report on Violence and Health (2002): the intentional use of physical force or power, threatened or actual, against a child, by an individual or group, that either results in or has a high likelihood of resulting in actual or potential harm to the child’s health, survival, development or dignity.”⁹ This definition actually conflates the WHO definitions of violence and of child abuse/maltreatment. The former is: “The intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation.”¹⁰ The WHO definition of child abuse or maltreatment is broader, and includes neglect and exploitation in certain circumstances: “all forms of physical and/or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child’s health, survival, development or dignity in the context of a relationship of responsibility, trust or power.”¹¹ A comparison of these two definitions does not support the conclusion that neglect and exploitation are forms of violence but, rather, that they are forms of child abuse, when they occur in a certain context.¹² It should be noted that both WHO definitions require certain consequences for the well-being of the child. The UN Study’s conflation of these definitions lowers the threshold for the requisite harm by substituting “harm to dignity” for “maldevelopment or deprivation”.¹³ Unlike the “article 19 definition”, the UN Study’s conflated WHO definition is not widely cited.

The definition of VAC based on article 19 proposed by the UN Study has been endorsed by the Committee on the Rights of the Child.¹⁴ While the views of the Committee on the meaning of provisions of the CRC deserve serious consideration, they are not binding.¹⁵ The first Special Representative of Secretary General on Violence Against Children endorsed it implicitly in her final report.¹⁶ The present Special Representative of Secretary General on Violence Against Children has not expressly endorsed any general definition of violence against children.¹⁷ The Global Partnership on Ending Violence Against

⁸ Children’s Access to Justice, 2016 Country Analytical Reports of Georgia, Serbia, Moldova and Romania, respectively. UNICEF/TransMonEE, Geneva, unpublished

⁹ UN Study, para.8, citing p.5 of the World Report on Violence and Health

¹⁰ World Report on Violence and Health, p.5, citing WHO Global Consultation on Violence and Health, Violence: a public health priority, Geneva, 1996. The identification of actual or threatened physical force or power as an essential component of all violence appears to contradict widely accepted definitions of sexual and psychological violence: the essential element of sexual violence is the absence of consent, and the essential element of psychological violence is intentional behaviour that harms emotional well-being, regardless of whether the absence of consent or emotional harm is caused by actual or threatened physical force. However, this WHO report indicates that the “use of power” includes “acts that result from a power relationship including threats and intimidation” and “should be understood to include ... neglect and psychological abuse...”. It also defines sexual violence in terms that do not require physical force. These clarifications in effect make the WHO definition of violence broader than it appears.

¹¹ Id, p.59

¹² The contextual element is defined in terms similar to the last clause of CRC article 19.1

¹³ Harm to dignity is part of the WHO definition of child abuse or maltreatment, not violence; the threshold also is lowered by replacing the element of “high likelihood” of harm by “potential” harm.

¹⁴ General Comment No.13, The right of the child to freedom from all forms of violence, CRC/C/GC/13, 2011, para.4

¹⁵ See Art.45(d) of the CRC

¹⁶ Keeping the Promise: Ending Violence Against Children by 2030, New York, 2019, Box 2, p.36, second bullet point

¹⁷ Annual Report of the Special Representative of the Secretary General on Violence Against Children, A/74/259, 2019 and Annual Report of the Special Representative of the Secretary General on Violence Against Children, 2020, A/75/150

Children also embraces a definition of VAC that includes exploitation and neglect.¹⁸ UNICEF's position is somewhat fluid, but leans towards a narrow definition of violence. A 2015 publication refers to *deliberate* neglect as a form of VAC.¹⁹ A 2017 report states that it "addresses all forms of interpersonal violence (e.g. physical, sexual and emotional) ..." with no mention of neglect or exploitation.²⁰ It also distinguishes between sexual abuse and sexual exploitation: "Child sexual abuse becomes sexual exploitation when a second party benefits monetarily, through sexual activity involving a child."²¹ Yet another 2017 publication on VAC focuses exclusively on physical, sexual and psychological violence.²²

One of the main sources for interpreting treaties is "practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation".²³ Investigation of the practice of Parties to the CRC is beyond the scope of this article, but some insight into the views of States on VAC can be gleaned from resolutions of the UN General Assembly.²⁴ The resolutions on the rights of the child adopted annually since 2008 provide limited support for the view that trafficking and sexual exploitation of children are forms of VAC, and none for the view that neglect constitutes VAC.²⁵ The resolution that called for the appointment of the Special Representative on VAC contains a paragraph that "*Condemns* all forms of violence against children, including physical, mental, psychological and sexual violence, torture and other cruel, inhuman or degrading treatment, child abuse and exploitation, hostage-taking, domestic violence, trafficking in or sale of children and their organs, paedophilia, child prostitution, child pornography, child sex tourism, gang-related violence, bullying and harmful traditional practices."²⁶ This implies a definition even broader than that based on CRC article 19, that includes practices prohibited by CRC articles 24.3, 34, 35 and 37. This suggests that the use of article 19 to define VAC is overbroad in some respects (e.g. recognition of neglect as a form of violence) and too narrow in others, because it ignores other CRC articles that prohibit other forms of violence. Other paragraphs of this General Assembly resolution imply that violence, abuse, neglect and exploitation are distinct violations of the rights of children.²⁷

The point is not to propose an alternative general definition of VAC. The meaning of this concept can be affected by the purposes for which the term is employed and the cultural context. This article focuses on three core forms of VAC, namely, physical, psychological and sexual violence. Physical violence is understood as the intentional use of actual or threatened physical force that results in, or has a high likelihood of resulting in, injury, death, psychological harm, maldevelopment or deprivation.²⁸ Psychological violence is understood as other intentional behaviour that results in or has a high likelihood

¹⁸ Ending Violence Against Children: key messages and statistics, undated, p.3, available at https://www.end-violence.org/sites/default/files/paragraphs/download/Key%20Messages_Long.pdf, consulted 19 Nov.2020

¹⁹ Protecting Children from Violence: A Comprehensive Evaluation of UNICEF's Strategies and Programme Performance, p.vii

²⁰ Responding to Violence against Children and Adolescents: Theory of Change, UNICEF, New York, 2017, p.6

²¹ Id, Box 3, pp.6-7. (Note that this definition of sexual exploitation differs from the concept of transactional sex as a form of sexual exploitation, used by the CDC VAC surveys, below.)

²² A Familiar Face: Violence in the lives of children and adolescents, New York, 2017

²³ Vienna Convention on Treaties, Art.31.3

²⁴ All UN Member States, save one, are Parties to the CRC.

https://www.ohchr.org/Documents/HRBodies/CRC/OHCHR_Map_CRC.pdf, consulted Mar.7, 2020

²⁵ Resolutions on child rights adopted from 2009 to 2016 have separate paragraphs on VAC and on sexual exploitation. A/RES/63/241, paras. 27 and 50; A/RES/64/146, paras.12 and 16-18; A/RES/65/197, para.12 and 18-20; A/RES/66/141, paras.12-13 and 20-22; A/RES/67/152, paras. 14-15 and 21-23; A/RES/68/147, paras.34 and 58; A/RES/69/157, paras.18 and 31; A/RES/70/137, paras.18-19 and 30; and A/RES/71/177, paras.19-20 and 32. However, in the resolutions on child rights adopted since 2017 the phrase "all forms of violence" is followed by a list of practices that includes certain forms of exploitation, such as trafficking, child prostitution and pornography, paedophilia and sex tourism. A/RES/72/425, A/RES/73/155 and A/RES/74/133, paras. 22, 29 and 16, respectively. (See also para.52 of 2008 resolution A/RES/62/146.)

²⁶ A/RES/62/141, 2007, para.52

²⁷ Paras.12 and 14

²⁸ This definition is based on the WHO definition of violence cited in note 11, supra.

of resulting in psychological harm or maldevelopment to a child.²⁹ Sexual violence is understood as non-consensual completed or attempted sexual contact, as well as non-consensual acts of a sexual nature not involving physical contact (e.g. exhibitionism, verbal harassment, and unwanted sexual comments or advances).³⁰

II. Obligations regarding VAC under international human rights law

Article 19 of the CRC is the broadest article on VAC, and expressly calls for legislative measures against VAC. The first paragraph provides that States have an obligation to take “all appropriate legislative ... 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. The second paragraph elaborates on the scope of this obligation, adding that it includes measures for the “identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment ... , and, as appropriate, for judicial involvement.” Article 39 complements article 19, imposing an obligation to “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. ...”. Legislative measures are not expressly mentioned by this article.

Other relevant articles include article 37(a), which provides “No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment”; article 6, which recognizes the right to life; article 37(a), which prohibits capital punishment for offences committed by persons under the age of 18; article 34, which obliges States to protect children from all forms of sexual exploitation and abuse; article 28.2, which obliges States to ensure that “school discipline is administered in a manner compatible with the child’s human dignity...”; and article 24.3 on the right to health, which obliges States to take “all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.”

The obligations recognized by the CRC do not exist in a vacuum. They are related to obligations recognized by other human rights treaties, and other international instruments. Some General Comments of the Committee on the Rights of the Child also help to clarify the scope and content of the obligations of Parties to the CRC. The obligations concerning law and VAC that States have under the CRC and other instruments include: to prohibit/criminalize; to recognize a duty to report VAC to the competent

29. This definition is based on the same WHO definition, extended to behaviour that does not necessarily involve physical force. It is similar to the definition used in VAC surveys. See CDC, Violence against Children Surveys: Our Methods, available at www.cdc.gov/violenceprevention/childabuseandneglect/vacs/methods.html, consulted Mar.6, 2020

30. This definition is based on INSPIRE: seven strategies for ending violence against children, 2016, WHO, Geneva, p.14 and World Report on Violence and Health, supra, p.149. A more recent INSPIRE publication contains a broader definition sexual violence in childhood: “All forms of sexual victimization of a girl or a boy under 18 years of age, including sexual abuse and sexual exploitation. This includes forced, pressured, coerced, unwanted or unlawful sexual activity with a girl or boy under 18 years of age, or attempts to engage in such activity. Sexual activity may include sexual intercourse or other sex acts, contact or non-contact sexual abuse and harassment, as well as sexual exploitation, in person and online.” INSPIRE Indicator Guidance and Results Framework, 2018, UNICEF, p.9. Defining as violence activity that is not forced, coerced or unwanted solely because it is unlawful stretches the ordinary meaning of the term. It does not seem appropriate for a global definition of sexual violence to vary according to the age of consent recognized by national law, or other differences between the material elements sexual crimes, such as the gender of participants. This definition also is overbroad as applied consensual sexual activities between adolescent children, in countries where the age of consent is 18: the Committee on the Rights of the Child has indicated that such activity should not be criminalized. General Comment No. 20 on implementation of the rights of the child during adolescence and General Comment No.21 on children in street situations, paras. 40 and 14, respectively. Most other global indicators on sexual violence against children do not cover conduct that is illegal but not forced, coerced or unwanted. Inspire Indicators, pp.32-33

authorities; to provide victims with remedies; to make the justice process child-sensitive; and obligations concerning criminal jurisdiction and mutual legal assistance.

- the obligation to prohibit or criminalize VAC

Treaty provisions that recognize an obligation to criminalize human rights violations are rare. The CRC does not expressly recognize an obligation to criminalize VAC, although the Optional Protocols oblige Parties to criminalize certain forms of exploitation.³¹

The Convention against Torture expressly requires the criminalization of torture, and making it punishable by sentences “compatible with the gravity of the offence.”³² The Convention on the Rights of Persons with Disabilities contains a broad obligation to “put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse against persons with disabilities are identified, investigated and, where appropriate, prosecuted.”³³ This in effect calls for the criminalization of violence against all persons with disabilities, whether children or adults. The Committee on the Rights of the Child has called on States to adopt and enforce laws to punish violence against children with disabilities.³⁴

The International Convention for the Protection of All Persons from Enforced Disappearance (“Convention on Disappearances”) requires criminalization of forced disappearances, as well as the wrongful removal of children from parents subject to enforced disappearance and falsification of the identity of such children.³⁵ Depriving family members of information about close relatives who are victims of forced disappearance also may constitute psychological torture or ill-treatment.³⁶ The European Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) requires criminalization of sexual abuse and exploitation of children.³⁷

Two treaties contain provisions that require the prohibition or the investigation and punishment of certain violations of the rights of children, requirements that can be satisfied by either criminal or administrative procedures. The Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence (“Istanbul Convention”) requires States Parties to “investigate [and] punish” domestic violence, including violence against children, as well as any gender-based violence against girls.³⁸ ILO Convention 182 on Worst Forms of Child Labour requires Parties to “prohibit” sexual exploitation, trafficking and sale of children, forced labour and exploitation in armed conflict and illicit activities such as drug trafficking.³⁹

In 2011 the Committee on the Rights of the Child adopted a General Comment on VAC which states that State Parties must “amend domestic legislation to ensure absolute prohibition of all forms of violence against children in all settings and effective and appropriate sanctions against perpetrators.”⁴⁰ It also has called on States to “explicitly prohibit by law and adequately sanction or criminalize harmful [traditional] practices”.⁴¹

31. The Optional Protocol on the sale of children, child prostitution and child pornography obliges Parties to criminalize those practices, and the Optional Protocol on children and armed conflict obliges Parties to criminalize the recruitment of children into armed forces and the use of children in hostilities by non-State armed groups. Arts. 3.1 and 4.2, respectively.

32. Art.4

33. Art.16. 5

34. General Comment No.9, The rights of children with disabilities, 2006, CRC/C/GC/9, para.31

35. Arts.4 and 25

36. see Kurt v. Turkey, European Court of Human Rights, Judgment of 25 May 1998, paras.130-134

37. Arts.18-23

38. Art.3(a) and (b) and 5.2

39. Arts. 1 and 3

40. General Comment No.13, supra, para.41(d)

41. General Comment No.18, Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/general comment No. 18 of the Committee on the Rights of the Child on harmful

The UN General Assembly adopts resolutions on the rights of the child annually. For more than a decade, they have urged States to take legislative measures to prohibit all forms of violence against children, and to end impunity for perpetrators of crimes against children by investigating and prosecuting VAC and imposing appropriate penalties.⁴² The repeated adoption of resolutions containing such provisions supports the position that all States have an obligation to criminalize VAC.⁴³ Recent General Assembly resolutions on the rights of the child also contain provisions on the criminalization of specific forms of VAC. Resolution 67/152, adopted in 2013, called on States to end impunity by holding accountable and punishing perpetrators of “the most serious crimes against children under national and international law”, in particular war crimes.⁴⁴ Resolution 68/147, adopted in the following year, urges States to investigate and prosecute sexual violence against children committed in armed conflicts.⁴⁵ It also calls for perpetrators of other crimes of violence to be held accountable, in particular for the torture or ill-treatment of children deprived of liberty and the torture or execution of street children.⁴⁶

The issue of criminalization is complex, and cannot be explored fully here. All States have an obligation to criminalize torture.⁴⁷ A growing number of treaties recognize obligations to criminalise other serious forms of violence and exploitation, although most such obligations are not specific to children.⁴⁸ The exception is the Council of Europe Convention on Sexual Abuse and Sexual Exploitation of Children (Lanzarote Convention), which obliges Parties to criminalize sexual abuse, child prostitution, child pornography, corruption of children and grooming.⁴⁹ These crimes must be “punishable by effective, proportionate and dissuasive sanctions, taking into account their seriousness.”⁵⁰

The resolutions of the General Assembly suggest that there is an emerging obligation under international law to criminalize VAC. In many countries, however, abuse and neglect having limited consequences for the victims are covered by administrative law. The scope of the emerging obligation to criminalize will depend on the operative definition of VAC. There is no evidence of an obligation to criminalize the whole range of practices included in broader definitions of VAC, in particular neglect.

- the obligation to report VAC

practices, 2014, CEDAW/C/GC/31-CRC/C/GC/18, para.13; see also para.40. Many harmful traditional practices involve physical violence, and some involve sexual violence.

⁴² A/RES/61/146, paras. 15 and 17(c); A/RES/62/141, paras.54 and 57(a) and (e); A/RES/63/241, para. 27(a) and (i); A/RES/64/146, para.12; A/RES/65/197, para.12; A/RES/66/141, paras.12 and 13; A/RES/67/152, paras. 14 and 15; A/RES/68/147, para.34(a) and (j); A/RES/69/157, para.18(a)-(b); A/RES/70/137, paras.18(a)-(b) and 19; A/RES/71/177, paras.19(b) and 20; and A/RES/72/452, para.35(e). The resolutions on the rights of the child adopted in 2019 and 2020 lack similar provisions. A/RES/73/155 and A/RES/74/133

⁴³ See UNGA Resolution A/RES/73/203, Identification of Customary Law, Conclusions 6.2 and 12

⁴⁴ A/RES/67/152, paras.26 and 65. Most war crimes against children involve acts of physical or sexual violence, although some (e.g. recruitment, or use as hostages) put children at risk of physical violence and may constitute emotional violence.

⁴⁵ A/RES/68/147, paras.63(f) and 65

⁴⁶ Id, paras.40 and 52

⁴⁷ See O'Donnell, D., “The Obligation to Establish Sentences for Torture that are Commensurate with the Gravity of the Offense”, Buffalo Human Rights Law Review, vol.22, 2016.

⁴⁸ See the above-cited provisions of the Convention on Disappearances and Convention on the Rights of Persons with Disabilities

⁴⁹ Arts.3b and 18-21. Article 18 defines sexual abuse as sexual activity by an adult with a child under the legal age for consent, or sexual acts committed by force, coercion, threats, abuse of a position of trust, authority or influence, a disability or dependence. The Lanzarote Convention has 46 States Parties.

www.coe.int/en/web/conventions/full-list/-/conventions/treaty/201/signatures, consulted Mar.7, 2020

⁵⁰ Art.27.1. The Council of Europe also adopted a Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), which obliges States Parties to criminalize violence against women (including girls) and domestic violence, including violence against children. Articles 33-39. It has 34 Parties. www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures, consulted Mar.7, 2020

Article 19.2 of the CRC, which requires States to take “all appropriate legislative ... measures” to protect children from violence and expressly mentions reporting, can be interpreted as calling for mandatory reporting of VAC to the competent authorities. The Committee on the Rights of the Child has adopted this interpretation, stating “In every country, the reporting of instances, suspicion or risk of violence should, at a minimum, be required by professionals working directly with children.”⁵¹ A subsequent General Comment on harmful traditional practices recommends that regulations be adopted to require medical and educational personnel to report cases in which children have suffered such practices, or appear to be at risk.⁵² The Lanzarote Convention obliges States Parties to take legislative or other measures to encourage any person who knows about or suspects sexual exploitation or sexual abuse of children to report these facts to the competent services.⁵³

- the obligation to assist victims to recover from VAC

Article 39 of the CRC requires States to provide child victims of certain forms of violence (and exploitation) with “all appropriate measures to promote physical and psychological recovery and social reintegration”.⁵⁴ It does not mention legislation, but in a General Comment on the right to health the Committee on the Rights of the Child states:

National laws should place a statutory obligation on the State to provide the services, programmes, human resources and infrastructure needed to realize children’s right to health and provide a statutory entitlement to essential, child sensitive, quality health and related services for ... children irrespective of their ability to pay.

Legislation should ... defin[e] the scope of the right and recognizing children as rights-holders; clarifying the roles and responsibilities of all duty bearers; clarifying what services children .. are entitled to claim; and regulating services and medications to ensure that they are of good quality and cause no harm.⁵⁵

These recommendations should apply to the right to assistance in recovering from the consequences of violence, as recognized by CRC article 39.⁵⁶

The Lanzarote Convention requires Parties to “take the necessary legislative or other measures to assist victims, in the short and long term, in their physical and psycho-social recovery”, taking due account of the child’s views, needs and concerns.⁵⁷ The Istanbul Convention also recognizes the right of victims to services facilitating recovery from violence, including legal and psychological counseling.⁵⁸

General Assembly Resolution 69/157, adopted in 2014, calls on States to ensure that all victims of VAC receive comprehensive physical and mental health and social services.⁵⁹ This provision has been reaffirmed in subsequent resolutions on the rights of the child, which supports the view that the provision of such services are an intrinsic part of the obligations of States concerning VAC.⁶⁰

- the obligation to provide remedies and reparations

51. General Comment No.13, supra, para.49

52. General Comment No.18, supra, para.49

53. Art.12.2 (see also Art.12.1)

54 See also Art.6.3 and 6.4 of the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children

55 General Comment No.15 on the right of the child to the enjoyment of the highest attainable standard of health, 2013, paras.94-95

56 To date the Committee does not seem to have commented on the relevance of these paragraphs for Art.39.

57 Art.14.1 (para.4 extends this right to “persons close to the victim”; see also Art.11.1)

58 Art.20.1

59 para.18(b)

60 A/RES/70/137, para.18(a) and (b) and A/RES/71/177, para.19(a)-(b)

Unlike most human rights treaties, the CRC does not expressly recognize the right of persons whose rights have been violated to a remedy.⁶¹ Child victims of torture have the right to a remedy under article 14 of the Convention Against Torture, and child victims of enforced disappearance have a right to reparations under article 24.4 of the Convention on Disappearances.⁶²

In 2003, the Committee on the Rights of the Child adopted a General Comment concluding that the right to a remedy “is implicit in the Convention”, adding:

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 ... 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.⁶³

- the obligation to make the justice process child-sensitive

The Optional Protocol to the CRC on the sale of children, child prostitution and child pornography requires Parties to adopt measures to “protect the rights and interests” of child victims in the criminal justice process.⁶⁴ These measures include procedures to recognize the special needs of child victims; the provision of information to them; allowing the views, needs and concerns of child victims to be presented and considered in proceedings; protection of the privacy, identity and safety of child victims; and the avoidance of unnecessary delay.⁶⁵ It also requires that the best interests of child victims be a primary consideration in criminal justice proceedings.⁶⁶ Strictly speaking, trafficking, sale, prostitution and pornography constitute exploitation rather than violence. Hence, these obligations apply only to the forms of exploitation covered by this Protocol. However, it is logical to conclude that children who have experienced physical, sexual and emotional violence in other contexts should be entitled to similar treatment.⁶⁷ While it may be possible to achieve some of these aims through administrative measures alone, others would require legislative measures.

The UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime were adopted in 2005 in order to “assist in the review of national and domestic laws, procedures and practices *so that these ensure full respect for the rights of child victims* and witnesses of crime and contribute to the implementation of the Convention on the Rights of the Child”.⁶⁸ One guideline provides that the law or court rules should provide for the expeditious handling of cases involving child victims or witnesses.⁶⁹ Implementation of some others also may require law reform, although they do not expressly call for it.

⁶¹ Art.9.4 of the Optional Protocol on the sale of children, child prostitution and child pornography does oblige Parties to “ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.” Child victims of trafficking also have the right to a legal remedy under article 6.6 of the Palermo Protocol (supra).

⁶² Victims include any person who has suffered harm as the direct result of the disappearance of another, including, of course, children whose parents have disappeared. Art.24.1

⁶³ General Comment No.5, General measures of implementation for the Convention on the Rights of the Child, 2003, CRC/GC/2003/5, para.24

⁶⁴ Art.8

⁶⁵ Art.8.1(a)-(g)

⁶⁶ Art.8(3)

⁶⁷ The Lanzarote Convention obliges States Parties to implement similar measures to facilitate the participation of child victims of sexual abuse in criminal investigations and proceedings. Arts. 30-31 and 35-36. The 2010 CoE Guidelines on child friendly justice are the most pertinent regional guidelines. Available at <http://www.euromed-justice-iii.eu/document/coe-2010-guidelines-committee-ministers-child-friendly-justice>, consulted 18 Nov. 2020

⁶⁸ ESOSOC Resolution 2005/20, I.3(a) emphasis added. available at <https://www.un.org/ruleoflaw/blog/document/guidelines-on-justice-in-matters-involving-child-victims-and-witnesses-of-crime/>, consulted 18 Nov. 2020

⁶⁹ para.30(c)

One is that special procedures for collecting evidence from children be used, to reduce unnecessary contact with the justice process and avoid to direct contact with alleged perpetrators.⁷⁰

The Lanzarote Convention contains detailed provisions designed to ensure that criminal investigations and proceedings are carried out expeditiously, in the best interests of the child, with respect for the rights of the child, and without aggravating the trauma experienced by the child.⁷¹ The Istanbul Convention provides that child victims of domestic violence and girl victims of physical, psychological and sexual violence in any context “shall be afforded, where appropriate, special protection measures taking into account the best interests of the child.”⁷²

- obligations concerning extraterritorial criminal jurisdiction and mutual legal assistance

The Optional Protocol to the CRC on the sale of children, child prostitution and child pornography, the Convention against Torture and the Convention on Disappearances all oblige States to establish extraterritorial jurisdiction for such crimes, and to cooperate with other States in bringing perpetrators to justice.⁷³ The Lanzarote Convention also contains provisions of this kind.⁷⁴

The resolution on the rights of the child adopted by the UN General Assembly in 2018 calls on States to “strengthen international cooperation and mutual assistance to prevent and protect children from all forms of violence and to end impunity for crimes against children.”⁷⁵ This seems to refer to mutual legal assistance, that is, the kind of assistance in investigating and prosecuting crimes described by article 6 of the Optional Protocol on the sale of children, child prostitution and child pornography.⁷⁶

The exact obligations a given State has depend on which treaties it is a Party to, as well as the intrinsic relationship between its various treaty obligations, and between its treaty obligations and other relevant international guidelines. International law on the obligations of States regarding criminal law and VAC is evolving, as the UNGA resolutions cited above show, and more States – even those that do not have a treaty obligation to do so - are incorporating more of these legal measures into their legislation.

III. The 2006 UN Study on VAC and subsequent UN strategies on VAC

The UN Study contains 17 “Overarching Recommendations”. One calls on States “to prohibit all forms of VAC, in all settings, including all corporal punishment, harmful traditional practices, ... sexual violence, torture and other cruel, inhuman or degrading treatment or punishment...”.⁷⁷ Another adds: “States should build community confidence in the justice system by, inter alia, bringing all perpetrators of VAC to justice and ensure that they are held accountable through appropriate criminal, civil, administrative and professional proceedings and sanctions.”⁷⁸

Identification of the circumstances when criminal proceedings are appropriate and when civil or administrative proceedings may be more appropriate is an important issue. A commentary by the author of the UN Study declares “There should be no impunity for those who perpetrate violence against children” and “Strong and enforceable legal sanctions should be implemented to deter violence against

⁷⁰ para.31(a)-(b) and 34

⁷¹ Arts.30-31 and 34-36

⁷² Convention on preventing and combating violence against women and domestic violence, CETS 201, Art.56.2. See also Art.26.2

⁷³ Arts. 4, 6-7, and 9-14 and Arts.5-9, respectively

⁷⁴ Arts.25.1-2 and 38.2-3

⁷⁵ A/RES/73/245, para.31

⁷⁶ e.g. providing evidence requested by a foreign court. See UNODC, Manual on Mutual Legal Assistance and Extradition, Vienna, 2012.

⁷⁷ para.98 (Recommendation 2)

⁷⁸ Id, para.105 (Recommendation 9)

children”.⁷⁹ The reference to deterrence implies that retribution is not the ultimate aim. Indeed, the commentary indicates that “The first purpose of clear prohibition of violence is educational” and “Prosecutions and formal interventions, in particular within the family, should occur when necessary to protect a child from significant harm and when judged to be in the best interests of the child.”⁸⁰

The author’s commentary on Recommendation 9 also indicates that child-sensitive procedures for investigating cases of violence must be developed, and court processes must ensure that child witnesses are treated sensitively.⁸¹ The UN Study also recommends that the services provided to victims of VAC include legal assistance.⁸²

The General Assembly adopted a resolution welcoming the UN Study in 2006.⁸³ It stops short of asking States to implement all of the Recommendations made by the Study, but urges them “to take effective legislative and other measures to prevent and eliminate all such violence, including physical, mental, psychological and sexual violence...” and to “end impunity for perpetrators of crimes against children, investigate and prosecute such acts of violence and impose appropriate penalties.”⁸⁴ These recommendations have been reaffirmed in subsequent annual resolutions on child rights.⁸⁵

UNICEF Strategy 2006-2013

UNICEF’s Medium-Term Strategic Plan for 2006-2009 called for support for follow-up to the UN Study for “effective legislative and enforcement systems and improved protection and response capacities to protect children from all forms of abuse, neglect, exploitation and violence”, for mechanisms to protect child victims, child-friendly and gender-appropriate investigative and court procedures, and for the inclusion of internationally-accepted norms for child justice in laws and policies in post-conflict countries.⁸⁶ This Strategic Plan was revised and extended to 2013.⁸⁷ The revised Plan also called for law and policy reform regarding VAC and support for programs to prevent and respond to violence, exploitation and abuse. Indicators included the number of countries having child-friendly investigation and court procedures, the number implementing the UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, the number criminalizing all forms of sexual abuse and exploitation of girls and boys, the number having services for child victims of violence, exploitation and abuse, and the number prohibiting by law violence against children in the home.⁸⁸ The 2013-2017 Strategic Plan abandoned this focus on addressing VAC through strengthening legislation and the justice system, in favor of strengthening the “protective capacities of families and communities.”⁸⁹

⁷⁹ Pinheiro, Paolo S., World Report on Violence Against Children, UN, Geneva, 2006, p.19, available at <https://www.thinkchildsafe.org/thinkbeforedonating/wp-content/uploads/World-Report-On-Violence-Against-Children-UN.pdf>, consulted 7 Mar.2020

⁸⁰ Ibid. A decade later he reaffirmed “law in itself, properly disseminated, is a most powerful tool in changing social norms that tolerate and condone violence.” Celebrating Childhood, United Nations, New York, 2016, p.3

⁸¹ World Report on Violence Against Children, supra, p.22

⁸² Recommendation 6, para.102

⁸³ A/RES/61/146, para.13

⁸⁴ Ibid, paras.15 and 17(c)

⁸⁵ A/RES/62/141/paras.57(a) and 54; A/RES/63/241, para.27(a) and (i); A/RES/64/146, para.12; A/RES/65/197, para.12; A/RES/66/141, paras.12-13; A/RES/67/152, paras.14-15; A/RES/68/147, para.34(a) and (j); A/RES/69/157, para.18 and 18(b); A/RES/70/134, para.18 and 18(b) ; A/RES/71/177, para.19 and 19(b); A/RES/72/425, para.35(a) and (e).

⁸⁶ E/ICEF/2005/11, paras.81 and 83

⁸⁷ Protecting Children from Violence: A Comprehensive Evaluation of UNICEF’s Strategies and Programme Performance, UNICEF, New York, 2015, note 18

⁸⁸ Revised annexes to the medium-term strategic plan, Annex I, pp.25-26, 2012

⁸⁹ E/ICEF/2013/21, para.19(f); see also the Results Framework of the Strategic Plan 2014-2017, E/ICEF/2014/8, pp.22-24

In 2015 UNICEF published an evaluation of its strategies and programs on VAC from 2009 to 2013.⁹⁰ Thirty-two of the 70 UNICEF offices that responded to a survey indicated that moderate progress was achieved in the development of legal and policy frameworks, and the evaluation concluded that “advocacy for improved legal and policy frameworks was the strongest area of success”.⁹¹ Shortcomings included enforcement and implementation of legal and policy frameworks, and measuring actual improvements in system functioning and outcomes for children and families.⁹²

In 2014 UNICEF published *Ending Violence against Children: Six Strategies for Action*.⁹³ The strategies for the elimination of VAC called for legislation outlawing corporal punishment, sexual abuse and emotional violence, and for “improving the prosecution of perpetrators ... through specialized prosecutors, police and courts.”⁹⁴ The only example of legislation having had a positive impact on VAC cited by this publication is the 1979 law banning corporal punishment in Sweden.⁹⁵ This is remarkable, given UNICEF’s involvement in strengthening legal frameworks on VAC since 2006. An assessment of quantitative studies published by UNICEF the same year concluded that research on VAC was highly fragmented, the quality of studies was highly uneven, and few of them used sound research methodologies and approaches.⁹⁶

The Sustainable Development Goals and indicators

The work of the UN system for the next decade should be oriented towards fulfillment of the Sustainable Development Goals (SDGs) adopted in 2015. Goal 16 calls for the promotion of peaceful and inclusive societies and access to justice for all. One of the ten targets under this goal is to end all forms of violence, exploitation, abuse and torture of children.⁹⁷ There are three indicators for this target: the proportion of children who experience physical violence and/or psychological aggression by caretakers; the number of victims of trafficking; and the proportion of young men and women who experience sexual violence during childhood.⁹⁸ UNICEF is responsible for collecting data on the first and third indicators.

Several SDG indicators that do not apply exclusively to children also are relevant. They include the number of victims of intentional homicide per 100,000 population, the number of conflict-related deaths per 100,000 population, the proportion of population subjected to physical, psychological or sexual violence in the previous 12 months, and proportion of victims of violence who reported their victimization to competent authorities.⁹⁹ Goal 5 calls for the elimination of harmful practices such as child marriage and female genital mutilation (FGM). It has an indicator on the percentage of women and girls over the age of 15 who experience sexual violence during the previous year, one on the percentage of girls in a marriage or partnership before age 15 and before age 18, and another on proportion of women and girls who have undergone FGM/C.¹⁰⁰

⁹⁰ *Protecting Children from Violence*, supra

⁹¹ *Ibid*, p.ix

⁹² *Ibid*.

⁹³ *Ending Violence against Children: Six Strategies for Action*, 2014, UNICEF, New York

⁹⁴ *Ibid*, p.42

⁹⁵ *Ibid*, p.43

⁹⁶ *Measuring VAC: Inventory and Assessment of Quantitative Studies*, 2014, UNICEF, New York, p.2. Most of the studies had been carried out only once, precluding measurement of change in prevalence. pp.18 and 21. The *Comprehensive Evaluation* mentioned above (notes 85 and 88) also concluded that UNICEF indicators concerning VAC programming were inadequate. p.ix

⁹⁷ Target 16.2

⁹⁸ Indicators 16.2.1, 16.2.2 and 16.2.3, respectively.

⁹⁹ Indicators 16.1.1, 16.1.2, 16.1.3 and 16.3.1, respectively.

¹⁰⁰ Indicators 5.2.2, 5.3.1 and 5.3.2. Indicator SGD 5.2.1 is the proportion ever-partnered women and girls over the age of 15 who experience physical, sexual or phby partners or former partners. Indicator 5.2.2 overlaps with SDG 16.2.3.

UNICEF's current Strategic Plan

UNICEF's 2018-2021 Strategic Plan has three indicators related to the SDG indicators. One calls for data on child victims of sexual violence, but only if they have sought help.¹⁰¹ Another asks for the percentage of adults who disapprove of corporal punishment, rather than the number or proportion of children who have experienced physical punishment and/or psychological aggression by caregivers.¹⁰² The third requests data on the percentage of girls who have undergone FGM.¹⁰³ The Strategic Plan also calls for children who have experienced VAC to receive services, and has an indicator on the number of victims "reached by health, social work or justice/law enforcement services".¹⁰⁴ A similarly vague indicator on calls for the number of children in contact with administrative/justice bodies who receive interventions to improve their access to justice.¹⁰⁵ It does not contain any indicators on the number or percentage of children who have experienced physical, sexual and/or psychological violence. The three indicators that the Strategic Plan refers to as "SDG-related" will not generate data on the two important Goal 16.2 indicators that UNICEF is responsible for.

While the SDGs call for an end to all forms of VAC, the UNICEF Strategic Plan calls for protection from VAC. While ending VAC may be utopian, it is regrettable that the current Strategic Plan contains no quantitative goals regarding the prevalence of any form of VAC. It also is regrettable that the specific goals regarding legislation and legal procedures found in the previous Plans mentioned above, are not reaffirmed in the current Strategic Plan.

INSPIRE and the Global Partnership on Ending Violence against Children

In 2016, the WHO published INSPIRE: Seven Strategies for Ending Violence Against Children, described as a tool to help achieve SDG 16.2.¹⁰⁶ The first strategy is "implementation and enforcement of laws". It calls for four kinds of legislation: banning violent punishment of children by parents, teachers and other caretakers; criminalizing sexual abuse and exploitation; laws against alcohol abuse; and laws limiting the access of young persons to weapons.¹⁰⁷ The reasons for selecting these particular kinds of laws vary. The main reason to prohibit violent punishment is to change attitudes and social norms, while the stated reason for criminalizing sexual abuse and exploitation is to hold perpetrators accountable.¹⁰⁸ Laws concerning access to alcohol and weapons are intended to reduce risk factors for VAC.¹⁰⁹ The seven strategies claim to be wholly evidence-based, but no study on the impact of criminalizing sexual abuse is cited, and most of the studies cited on the impact of restrictions on alcohol and firearms do not focus on VAC. This shows the need for greater research on the impact of law reform and law enforcement on VAC.

The INSPIRE strategies are endorsed and supported by the Global Partnership to End VAC ("Partnership"), launched the same year with the support of UNICEF, the WHO, UN Women, the United Nations Population Fund, and the United Nations High Commissioner for Refugees.¹¹⁰ The Partnership aims to "build and sustain political will to end violence against children", and to identify and promote "evidence-based strategies that will lead to significant, sustained and measurable reductions in

¹⁰¹ Final Results Framework of the UNICEF Strategic Plan 2018-2021, 2017, p.27

¹⁰² Ibid

¹⁰³ Id, p.29

¹⁰⁴ Id, p.27

¹⁰⁵ Id, p.31

¹⁰⁶ INSPIRE was developed through collaboration between the WHO, UNICEF, the CDC, the UN Office on Drugs and Crime, the World Bank, Together for Girls and the Global Partnership for Ending VAC. p.9

¹⁰⁷ pp.30-35

¹⁰⁸ p.31

¹⁰⁹ Ibid.

¹¹⁰ Preparations began in 2014. See David Steven, Global Partnership to End Violence Against Violence, New York University, 2014, available at

http://origin.who.int/violence_injury_prevention/violence/7th_milestones_meeting/Steven_Global_Partnership_to_End_Violence_against_Children.pdf , consulted 4 Mar.2020

violence”.¹¹¹ Its approach to ending VAC focuses on legislation, integrated services for preventing and responding to violence, and access to social services.¹¹² Thirty “Pathfinding countries” have adopted time-bound national plans with concrete commitments regarding ending VAC.¹¹³ The Partnership has established an “End Violence Lab” designed to assist Pathfinding Countries compile data and evidence regarding VAC.¹¹⁴ It is based on part in the Inspire indicators (see below).

Although the Partnership aims to promote evidence-based strategies that lead to measurable reductions in VAC, to date no information has been published on the impact of its activities, or those of Pathfinding countries, on the prevalence of VAC. A 2020 publication on VAC statistics contains more than 100 statistics.¹¹⁵ Almost all are static rather than dynamic, focusing on the magnitude of various forms of violence and exploitation rather than changes in prevalence. It contains no data on any decrease in physical, sexual or emotional violence.¹¹⁶ Since the Partnership was established recently, it may be unrealistic to expect evidence of reductions in VAC that can be attributed to programs or reforms undertaken in the framework of the Partnership. It is to be hoped that the Partnership will develop baseline data on and a system for periodic monitoring of the prevalence of VAC, at least in Pathfinding countries.

Monitoring

An INSPIRE Handbook, and guidelines on indicators, were published in 2018.¹¹⁷ The Handbook calls for the development of “indicators and metrics to evaluate implementation and impact” of laws related to VAC, including “data on incidence of sexual abuse and exploitation, and percentages of cases reported, investigated, prosecuted, and perpetrator sentenced.”¹¹⁸ The guidelines contain eight indicators on physical, sexual and psychological VAC. The broadest are one on “physical attacks” and one on sexual violence.¹¹⁹ Both cover violence regardless of where it occurs or the identity of the perpetrator, but only violence against adolescents, not children. A narrower indicator on physical violence calls for data on intentional homicide in which the victim is a child or adolescent.¹²⁰ There also is an indicator on physical violence by teachers, which covers students of any age.¹²¹ Two indicators cover both physical and psychological violence. One, on violent discipline by caretakers, covers violence against children of any age.¹²² The other, on bullying, covers violence against adolescents perpetrated by peers.¹²³ There also

¹¹¹ Sustainable Development Goals Partnership Platform, undated, <http://sustainabledevelopment.un.org/partnership/?p=9061> consulted 16 Nov.2020

¹¹² Ibid

¹¹³ <https://www.endviolence.org/sites/default/files/paragraphs/download/Pathfinding%20Dashboard.pdf>, consulted 16 Nov.2020

¹¹⁴ <https://www.end-violence.org/end-violence-lab>, consulted 17 Nov.2020. (The Lab is a collaboration with the University of Edinburgh, and also aims to assist Pathfinding Cities.)

¹¹⁵ Ending Violence Against Children: Key messages and statistics, https://www.end-violence.org/sites/default/files/paragraphs/download/Key%20Messages_Long_0.pdf, consulted 17 Nov. 2020

¹¹⁶ The only decreases mentioned are a decrease in child labour during the period 2000 to 2012 reported by the ILO and a decrease in child marriage over a decade reported by UNICEF in 2018. p.7, consulted 17 Nov. 2020

¹¹⁷ INSPIRE Handbook: action for implementing the seven strategies, 2018, WHO, Geneva, and INSPIRE Indicator Guidance and Results Framework - Ending Violence Against Children: How to define and measure change, 2018, UNICEF, New York

¹¹⁸ pp.44 and 53

¹¹⁹ Indicators 1.8 and 1.4

¹²⁰ Indicator 1.9

¹²¹ Indicator 1.2

¹²² In principle it excludes violence inflicted by caretakers for other motives, although it is unclear whether this limitation is applied in practice.

¹²³ Indicator 1..7

are two indicators that cover both sexual and physical violence by intimate or romantic partners of the victim.¹²⁴

All of these indicators call for the percentage of children or adolescents having experienced these particular forms of violence. Some call for the percentage having had such experiences during the last year or month; others during their lifetime. Only the former are useful for assessing the impact of legislative change. The guidelines recommend that data on these indicators should be collected every 3 to 5 years, except data on homicide, which should be collected annually. There also are qualitative indicators on the existence of laws protecting children from physical punishment and from sexual abuse and exploitation, and laws “ensuring an adequate response” by professionals and justice institutions to VAC.¹²⁵

The guidelines identify existing sources of relevant data, including the Global School-based Student Health Survey (GSHS), the Multiple Indicator Cluster Survey (MICS), and Violence Against Children Surveys.¹²⁶ Surveys are considered “the essential measurement tool”, given the low number of child victims who report victimization to the authorities or seek help.¹²⁷

The GSHS is a project of the WHO and the Centres for Disease Control and Prevention (CDC). It contains questions on physical violence by any perpetrator, and bullying, and has been carried out in more than 100 countries.¹²⁸ MICS is household survey developed by UNICEF in the 1990s. MICS 6, the most recent version, asks for data on the number of children 1 to 14 years of age who experienced physical punishment or psychological aggression by a caretaker during the previous month.¹²⁹ Previous versions asked only for data on parental attitudes towards discipline.¹³⁰ MICS 6 has been completed in 31 countries and is being carried out in 39 more.¹³¹

The VAC survey is another WHO/CDC project, carried out with the support of Together for Girls, UNICEF and other partners. VAC surveys are particularly important because they seek data on all core forms of violence - physical, sexual and psychological - against boys and girls aged 13 to 17, regardless of where it occurs and the identity of the perpetrator.¹³² The collection of data on the prevalence of physical and sexual violence against children on a regular basis would be a valuable step that would facilitate assessment of the impact of laws designed to reduce these forms of VAC. Unfortunately, CDC surveys on VAC have been carried out in only 19 countries to date, and only two have carried out a second survey.¹³³

All of these surveys focus on physical, sexual and/or psychological violence. None are designed to collect data on exploitation or neglect. The only exception of sorts concerns the WHO/CDC survey, which defines sexual violence as:

Sexual violence includes all forms of sexual abuse and sexual exploitation of children. This encompasses a range of acts, including completed non-consensual sex acts (such as rape),

¹²⁴ Indicator 1.5 and 1.6 (The former applies only to female victims over the age of 15; the latter to boys and girls over the age of 13.)

¹²⁵ Id, pp.47, 52

¹²⁶ p.4

¹²⁷ Hillis S, Mercy J, Amobi A, et al. Global Prevalence of Past-year Violence Against Children: A Systematic Review and Minimum Estimates. *Pediatrics*. 2016;137(3):e20154079

¹²⁸ www.who.int/ncds/surveillance/gshs/country/en/

¹²⁹ Indicator PR.2; PR.11 asks for data on girls under 14 who have experienced FGM

¹³⁰ Child Disciplinary Practices at Home: Evidence from a Range of Low- and Middle-Income Countries, UNICEF, NY, 2010, pp.9-10

¹³¹ <https://mics.unicef.org/surveys>, consulted 19 Nov.2020

¹³² www.cdc.gov/violenceprevention/childabuseandneglect/vacs/publications.html

¹³³ Botswana, Cambodia, Colombia, Cote d'Ivoire, El Salvador, eSwatini, Haiti, Honduras, Kenya, Laos, Lethsoto, Malawi, Moldova, Nigeria, Rwanda, Tanzania, Uganda, Zambia and Zimbabwe. In Zimbabwe, surveys were carried out in 2012 and 2017; and in Kenya surveys were carried out in 2010 and 2019.

<https://www.togetherforgirls.org/violence-children-surveys/> consulted 19 Nov. 2020

attempted non-consensual sex acts, abusive sexual contact (such as unwanted touching), and non-contact sexual abuse (such as threatened sexual violence, exhibitionism, verbal sexual harassment).¹³⁴

Although the first sentence states that sexual violence includes sexual exploitation, the operative definition in the second sentence covers only acts that are forced, coerced or unwanted. States carrying out the survey nevertheless have the option of collecting data on both sexual violence and sexual exploitation: of the most recent surveys published, nine cover only sexual violence and three cover both sexual violence and sexual exploitation.¹³⁵ (Interestingly, sexual exploitation is not defined as prostitution or pornography for the profit of a third party, but rather transactional sex i.e. the exchange of sexual services for food, money or favors.¹³⁶) This seems to be a practical approach to the issue of whether monitoring of sexual violence should include sexual exploitation.

IV. The impact of legislation on VAC

To date, there has been no systematic effort to monitor or assess the impact of legislative measures on the prevalence of any form of VAC. This part of the article considers a few studies on the impact of legislation in Europe cited by INSPIRE: Seven Strategies, and some data and analysis from Latin America assessing implementation of the recommendations of the UN Study on VAC concerning legislation. Mention also is made of two African countries in which two VAC surveys carried out. Reducing the prevalence of VAC is not the only reason for the legal measures described above: legislative measures also are needed to recognize and protect the rights of victims. However, the SDGs indicate that reducing prevalence of VAC is the highest priority for the international community for this decade.

European studies

The INSPIRE strategy on implementation and enforcement of laws consists of four “approaches”. The approach that calls for the banning of corporal punishment cites five studies, one on Sweden, two on Finland, one on five Western European countries, and another on seven Eastern and Central European countries. One of the Finnish studies measured the prevalence of different kinds of violent punishment, and concludes that the adoption and implementation of a law banning corporal punishment contributed to a decrease in the percentage of children who experienced more serious forms of corporal punishment.¹³⁷

¹³⁴ www.cdc.gov/violenceprevention/childabuseandneglect/vacs/methods.html, consulted 19 Nov. 2020

¹³⁵ Violence Against Children and Youth in Cote d'Ivoire: Findings from a National survey, Ministry of Women, the Family and Children, 2020, p.27; Colombia: Violence against Children and Youth Survey, Ministry of Health, 2019, p.21; Kenya, Violence Against Children Survey Report, Ministry of Labour and Social Protection, 2019, p.13; The Republic of Moldova, Violence against Children and Youth Survey, Ministry of Health, Labour and Social Protection, 2019, p.38; Lesoto Violence against Children and Youth Survey 2018, Ministry of Social Development, 2020, p.10; Report on Violence Against Children Survey/National Survey on Life Experiences and Risk of HIV Infection Among 13 to 24 Year Old Males and Females in Botswana, Statistics Botswana, 2019, p.15; El Salvador Violence Against Children Survey 2017, Ministry of Justice and General Directorate of Statistics and Census, San Salvador, 2019, pp.vi and 14; Honduras Violence Against Children Survey 2017, Sub-Secretariat of Security in Prevention, Secretariat of Security, 2019, p.ix; and Young Adult Survey of Zimbabwe: A Violence Against Children Survey, 2017, Zimbabwe Ministry of Health and Child Care and Elizabeth Glaser Pediatric AIDS Foundation, 2019, p.19; Violence against Children in Uganda: Findings from a National Survey 2015, Ministry of Gender, Labour and Social Development, 2017, Kampala, p.x; Violence against Children in Zambia: Findings from a national survey 2014, Ministry of Youth, Sport and Child Development, Lusaka, 2018, p.xix; and Violence Against Children Survey in Lao PDR, pp.43-44, all consulted Mar.4, 2020

¹³⁶ Violence against Children in Uganda, supra, p.x. Two surveys used a broader definition of sexual exploitation that also included “show[ing] sexual body parts in front of a camera”, with or without consent. The number of children who reported this behavior was very low. Violence against Children in Zambia, p.xix, and Violence Against Children Survey in Lao PDR, p.49, consulted Mar.4, 2020

¹³⁷ Österman, K, Björkqvist, K, and Wahlbeck, K. Twenty-Eight Years After the Complete Ban on the Physical Punishment of Children in Finland: Trends and Psychosocial Concomitants, *Aggressive Behaviour*, 2014, vol.

The Swedish study and the other Finnish study focus on attitudes towards corporal punishment, rather than prevalence.

The study on Western European countries compares prevalence in three having banned corporal punishment at the time of the research and two that had not. The research shows that the percentage of parents who use “light” corporal punishment in countries where it was banned varied from 14% to 50%, compared to 55% to 72% in the two countries that had not banned it. Similarly, the percentage of parents who used “spanking” varied from 4% to 17% in countries where it was banned, as compared to 51% to 54% in countries where it was not. The authors conclude that bans on corporal punishment clearly reduce the prevalence of corporal punishment.¹³⁸

This study also analyzes the importance of campaigns to raise awareness of the negative consequences of corporal punishment, both in countries where legislation banning corporal punishment had been adopted, and those where corporal punishment was not banned. The results indicate that fewer parents used corporal punishment in the two countries (Germany and Spain) where significant national campaigns had been carried out, as compared to the two countries (Austria and France) where such campaigns had not been carried out. They also indicate that the prevalence of corporal punishment is much lower in Sweden than in the two other countries where this practice is banned. The authors conclude that this shows the impact of sustained campaigns to enhance awareness and acceptance of laws banning corporal punishment, although they recognize that non-violent education also has a much longer cultural and legal tradition in Sweden.¹³⁹

Another multi-country study is based on surveys carried out in Bulgaria, Lithuania, Latvia, North Macedonia, Moldova, Poland, and Ukraine in 2005-2006.¹⁴⁰ At the time of the surveys corporal punishment had been banned in three of these countries.¹⁴¹ The surveys did not document actual use of corporal punishment, but asked for the attitudes of adults on corporal punishment and their opinions about its prevalence. The highest percentage of respondents who stated corporal punishment is never acceptable was in the three countries where it had been prohibited.

In conclusion, two studies, one covering five European countries, contain evidence that banning corporal punishment has a positive impact on prevalence of this form of VAC. The magnitude of the impact varies considerably between countries, and appears to depend in large part on efforts made to raise public awareness and acceptance of the relevant legislation.

Latin American studies

Between 2011 and 2013, a series of meetings were held to assess implementation of three of the recommendations contained in the UN Study. The first, in 2011, covered ten South American countries, and the second, in 2012, covered Central America, Mexico, Cuba and the Dominican Republic.¹⁴² All focused on the same recommendations, including the prohibition of all VAC.¹⁴³ The reports of these

9999, pp.1-14

¹³⁸ Bussman, K., Erthal, C. and Schroth, A., 2011, Effects of banning corporal punishment in Europe: a five country comparison, in *Global Pathways to Abolishing Physical Punishment*, Routledge, New York, 2011. (cited by *Responding to Violence*, note 69)

¹³⁹ Id, paras. 26, 28, 30-31

¹⁴⁰ Sajkowska, M. The Problem of Child Abuse: Attitudes and Experiences in Seven Countries of Central and Eastern Europe, Nobody’s Children Foundation, Warsaw University (undated) available at http://www.respectworks.eu/fileadmin/website/downloads/problem_child_abuse_central_eastern_europe.pdf, consulted Mar.7, 2020

¹⁴¹ Bulgaria, in 2000; Latvia, in 1998; and Ukraine, in 2004. It is now banned in all of them. <http://www.endcorporalpunishment.org/> consulted 26 April 2018

¹⁴² Organized by the Global Movement for Children

¹⁴³ Recommendations 1, 2 and 11, respectively. UN Study, supra, paras.96, 97 and 107

subregional meetings include 19 country reports.¹⁴⁴ All of them contain information on legislation, and some include observations on its impact. Some cite data on VAC prevalence.

The Central American reports indicate, in general, that legislation on VAC had had no positive impact on its prevalence. The Costa Rican report is the only one containing data that allows the comparison of the number of known victims of one kind of VAC before and after significant changes in legislation. The number of children treated for child abuse doubled between 2004 and 2011, despite the adoption in 2008 of a law banning corporal punishment.¹⁴⁵ More recent data confirms this trend, indicating that the number of children treated for physical abuse more than doubled between 2006 and 2013.¹⁴⁶ Unfortunately, the report contains no analysis of the reasons the law appears to have had little or no impact. The report of Mexico also indicates that VAC had increased, despite several improvements in the relevant legislation. This is attributed to a general increase of violence in the country.¹⁴⁷

Two country reports mention reasons for the limited impact of changes in legislation on VAC. The Nicaraguan report indicates that only 28% of persons accused of sexual crimes against children were convicted, because many cases are resolved through mediation.¹⁴⁸ The Guatemalan report indicates that, notwithstanding the enactment of new legislation against sexual violence in 2009, there were no or few convictions due to the weakness of the institutions responsible for enforcing the law.¹⁴⁹ The report of the meeting states that the ineffectiveness of courts and small number of perpetrators sentenced is a problem throughout the region. Another problem identified is that complaints of VAC are often treated as domestic violence cases, although procedures for domestic violence are designed for violence against women, not children.¹⁵⁰

Most of the South American country reports contain detailed information about legislative and other measures taken to implement the recommendations. Many also contain some data on VAC, but not data that would enable any inferences to be drawn on the impact of legislation. One exception is Ecuador, whose report indicates that the percentage of children who experienced VAC in the home and in school increased from 2000 to 2010 (from 35% to 44% at home and from 20% to 30% in school), despite the adoption of a law codifying the rights of children in 2003 and a 10-year national plan on child protection in 2004.¹⁵¹ Unfortunately, it contains no analysis of the reasons that these measures appear to have had no impact on the prevalence of VAC.

Another exception is the report of Chile, which contains data from surveys on child abuse in the home carried out in 1994, 2000 and 2006.¹⁵² A fourth survey was carried out in 2012.¹⁵³ Laws adopted during

¹⁴⁴ *Movimiento Mundial por Infancia, 2012, Estado de la situación de los países de Centroamérica, México, Cuba y República Dominicana en relación con la violencia contra los niños, niñas y adolescentes en seguimiento al Estudio de Naciones Unidas sobre la Violencia contra los Niños; Movimiento Mundial por Infancia, 2011, Mapeo Región América de Sur: Implementación de las recomendaciones del Estudio Mundial sobre la Violencia contra los Niños y Niñas.*

¹⁴⁵ *Estado de la situación de los países de Centroamérica ...*, p.106

¹⁴⁶ *Naciones Unidas hace un llamado para proteger a niñas y niños de violencia sexual y otros abusos*, press release dated 25 Feb. 2017 by UNICEF and UNFPA, www.unicef.org/costarica/media_35884.html, consulted Mar.7, 2020

¹⁴⁷ *Estado de la situación de los países de Centroamérica...*, p.154

¹⁴⁸ *Id.*, p.115

¹⁴⁹ *Id.*, pp.144-145

¹⁵⁰ *Id.*, p.181

¹⁵¹ *Código de la Niñez y Adolescencia, Ley No. 100, and Plan Nacional Decenal de Protección Integral de la Niñez y Adolescencia*

¹⁵² *Maltrato Infantil y Relaciones Familiares en Chile: Análisis Comparativo 1996-2000-2006*, UNICEF, undated.

The surveys were conducted in schools, with children in their early teens (75% were 13 years of age). Graph1

¹⁵³ UNICEF, 2015. *4º Estudio de Maltrato Infantil en Chile: Análisis Comparativo 1994 – 2000 – 2006 – 2012*, UNICEF, Santiago de Chile, 2015. The fourth survey was the first to cover sexual abuse. Available at <https://www.unicef.org/chile/informes/4-estudio-de-maltrato-infantil-en-chile-an%C3%A1lisis-comparativo-1994-2000-2006-2012>, accessed Mar.7, 2020

this period include a 2005 law on intrafamilial violence, a 2008 amendment to the Civil Code prohibiting corporal punishment in the home, and two earlier laws on sexual offences.¹⁵⁴ The surveys found that the percentage of children who reported experiencing no violence in their homes increased from 22.5% in 1994 to 29% in 2012.¹⁵⁵ The percentage of children who reported experiencing psychological violence increased, from 14.5% to 19.5%.¹⁵⁶ The biggest change concerned the percentage of children who reported experiencing serious physical violence, which fell from 34.2% to 25.9%.¹⁵⁷

The Chilean surveys found that VAC in the home is positively associated with poverty. The first survey showed that serious physical violence was used in 39.1% of poor families, compared to 31.2% of middle-income families, and 24.6% of higher-income families.¹⁵⁸ The decrease also was greatest amongst poor families, from 39.1% to 29%, as compared to the decrease from 24.6% to 18.9% in higher income families.¹⁵⁹ The authors hypothesize that the larger decrease in severe violence reported by children from poor families may be due to programs designed to help poor families meet their basic needs.¹⁶⁰

One general observation made by the South American report is that most of the countries had not yet adopted measures to make legal proceedings concerning VAC child-friendly.¹⁶¹ Another is that, while all have legislation that criminalizes sexual abuse of children, most such legislation had gaps.¹⁶² Some of the country reports identify other problems affecting the impact of legislation. The Bolivian report, for example, indicates that victims of VAC, especially sexual violence, are reluctant to report their experience to poorly trained and insensitive officials.¹⁶³ The Peruvian report also points to poorly trained officials, as well as poor infrastructure and material shortages.¹⁶⁴ Many reports point to the absence or weakness of data collection systems as an obstacle to better implementation of laws and policy on VAC.¹⁶⁵

The Chilean surveys confirm European surveys indicating that legislation on VAC can help to reduce VAC in the home, but other surveys indicate that legislation sometimes has no beneficial impact on the prevalence of VAC. The identification in some studies of factors believed to undermine the impact of legislation illustrates the potential usefulness of data on prevalence. The challenge is to take action to address the factors seen as limiting the impact of legislation, and monitor their consequences for prevalence. Another challenge is to move beyond monitoring VAC in the home to monitor the impact of legislation all forms of physical, psychological and sexual violence regardless of where it occurs.

VAC Surveys in Kenya and Zimbabwe

Two VAC surveys carried out in Zimbabwe found significant decreases in the prevalence of physical and sexual violence reported. A 2017 survey found that 16.6% of girls and 23% of boys experienced physical violence before age 18, and 9% of girls and 1% of boys experienced sexual violence before the age of 18.¹⁶⁶ A 2011 survey found that 64% of girls and 76% of boys experienced physical violence before

¹⁵⁴ *Ley No. 19.617 de Delitos Sexuales, Ley No. 19927 contra la Pornografía Infantil y Delitos Sexuales, and Ley No. 20.066 sobre Violencia Intrafamiliar*

¹⁵⁵ *4º Estudio*, supra, Graph 4

¹⁵⁶ *Ibid.* Psychological violence was defined as being told that you are not loved, being shut away (*'encerrado'*), being treated with vulgar language, being made fun of in the presence of others, and being threatened with being hit.

¹⁵⁷ *Ibid.*

¹⁵⁸ *Maltrato Infantil y Relaciones Familiares en Chile*, supra, Graph 8

¹⁵⁹ *Ibid.*

¹⁶⁰ *Id.*, p.44

¹⁶¹ *Mapeo Región América de Sur*, supra, p.28

¹⁶² *Ibid.*

¹⁶³ *Id.*, p.53

¹⁶⁴ *Id.*, p.168

¹⁶⁵ Argentina, p.43; Bolivia, p.59; Ecuador, p.130; Paraguay, p.154 and Venezuela, pp.196; see also Brazil, pp.78-79, Peru, p.170 and Uruguay, p.193

¹⁶⁶ Young Adult Survey, supra, pp.5-6

reaching age 18, and 33% of girls and 9% of boys experienced sexual violence before age 18.¹⁶⁷ Unfortunately, the second survey does not analyse the possible or apparent reasons for these large decreases in VAC.¹⁶⁸ However, no changes in criminal law or procedure related to VAC took place between the surveys.¹⁶⁹

VAC surveys carried out in Kenya in 2010 and 2019 found that the number of girls aged 13 to 17 who experienced any form of sexual violence during the preceding 12 months increased from 10.7 % in 2010 to 13.5% in 2019, while the number who experienced physical violence increased from 17.8% to 36.8%.¹⁷⁰ In contrast, the number of boys who experienced any form of sexual violence decreased from 4.2% to 2.4% over the same period, and the number who experienced physical violence fell from 47.6% to 40.5%.¹⁷¹ Kenyan legislation prohibits physical and sexual abuse, but the report based on the 2019 survey does not analyse the impact of such legislation on the prevalence of VAC.¹⁷² In 2016, however, the Committee on the Rights of the Child expressed concern about the “Lack of access to justice for child victims of violence, particularly in cases of sexual violence and harmful practices, due to social stigma, pressure from family members, low rates of investigation and prosecution, frequent delays in court proceedings, lenient sanctions imposed, the risk of revictimization in the justice system and the lack of legal aid and other supports.”¹⁷³

V. Conclusions and Recommendations

The definition of VAC

The definition of violence adopted by the UN Study and endorsed by the Committee on the Rights of the Child is overbroad. Although violence and exploitation are related in various ways, it is useful to distinguish between them, and between violence and neglect. Discussion of the prevention of and response to violence is likely to be more focused if it is limited to physical, sexual and psychological violence, and excludes exploitation and neglect.

The definition of violence based on the conflation of WHO definitions of violence and child abuse/maltreatment is not a better alternative. The requirement of harm seems useful, although harm to dignity may lower the bar too far.¹⁷⁴ The main flaw in this definition is the requirement of actual or threatened physical force or power. Psychological violence does not require the use of physical force or power, and the essential element of sexual violence is the lack of consent, not physical force or power. Although the WHO report indicates that the definition of violence covers “all types of ... sexual and psychological abuse”, the language of the definition contradicts this conclusion.¹⁷⁵

It may not be realistic to suggest that the so-called “article 19 definition” or the composite WHO definition, be modified or replaced, but it is important to be aware of their limitations. The practical implications of broad definitions of VAC are limited by the fact that surveys used to monitor VAC focus almost entirely on physical, psychological and sexual violence.

¹⁶⁷ Factsheet, available at www.togetherforgirls.org/wp-content/uploads/DIGITAL_Zimbabwe.pdf

¹⁶⁸ The only brief mention of a possible explanation is that the response rates for the 2017 survey were lower than those for the 2011 survey, which “could have led to lower participation among members of groups vulnerable to violence”. p.90

¹⁶⁹ See the Concluding Observations of the Committee on the Rights of the Child on the second report of Zimbabwe, UN doc. CRC/C/ZWE/CO/2, paras.4, 8 and 9

¹⁷⁰ Figures 13.2 and 13.6

¹⁷¹ Figure and 13.7

¹⁷² See the definition of child abuse in Art. 2 of the the Children Act as well as Art.13 of the Act, and Arts.3(c), (f), (k) and (l) of the Domestic Violence Act of 2015.

¹⁷³ Concluding observations on the combined third to fifth periodic reports of Kenya, CRC/C/KEN/CO/3-5, para.33(d)

¹⁷⁴ As indicated above, the WHO definition of violence as such requires actual or high likelihood of “injury, death, psychological harm, maldevelopment or deprivation.”

¹⁷⁵ World Report on Violence and Health, *supra*, p.5

State obligations

International human rights law recognizes five obligations applicable to VAC: to prohibit/criminalize it, to report VAC, to provide victims with remedies, to make justice child-sensitive, and to cooperate with one another in law enforcement. The obligation to provide victims with assistance in recovery is obligatory under article 39 of the CRC. The extent to which the other obligations apply to specific countries is fragmentary at present, depending on the nature of the violence and what other treaties are binding on them.

For more than a decade, UN General Assembly resolutions have urged States to take legislative action to prohibit all forms of violence against children and to end impunity for crimes against children. Recently, they also urge States to provide victims with medical, social and legal assistance, and to cooperate with each other in law enforcement. The Committee on the Rights of the Child interprets most of the other obligations mentioned above to be implicit in the CRC. Encouraging States to comply with these General Assembly resolutions and recommendations of the Committee, and movement towards compliance with all five of these obligations, should be a priority.

Documenting the impact of legislative measures on prevalence

Information on the impact of legislative measures concerning VAC is scarce. Although international organizations recognize the importance of legislative measures as part of comprehensive strategies for combating VAC, and the importance of data on VAC, the links between legislative measures and the prevalence of VAC are rarely assessed. Data show that the adoption of legislation concerning VAC has led to decreases in certain forms of VAC in some countries, but data from others show increases in VAC despite the adoption of legislation against it. Some factors associated with positive impact and with the lack of impact have been identified, although the reasons for the failure of legislation on VAC to reduce prevalence usually are not carefully documented and analyzed. Claims that strategies on VAC that include law reform are evidence-based have thin support.

Systematic efforts should be made to document the impact of changes in legislation and law enforcement on the prevalence of VAC. They should be made in different kinds of societies, periodically. They should not be limited to any single kind of VAC, but should cover physical, psychological and sexual violence, regardless of the context in which it occurs and identity of the perpetrators. The socio-economic background of populations surveyed should be documented to shed light on factors associated with greater or lesser impact of different measures. Finally, efforts to monitor the impact of legal measures should attempt to identify the interaction between them and other measures, such as awareness-raising and assistance to families and children at risk.

UNICEF

The SDGs, as indicated above, call for the elimination of VAC by 2030. There are three indicators for this target, and UNICEF is responsible for collecting data on two of them: the proportion of children who experience physical violence and/or psychological aggression by caretakers, and the proportion of young men and women who experience sexual violence during childhood. It is vitally important for the next Strategic Plan, which will cover a period starting in 2022, to mandate the collection of data on these SDG targets.

It is an aberration that, while the SDGs call for elimination of VAC, the UNICEF Strategic Plan for 2018-2021 contains no quantifiable goals concerning the prevalence of any form of VAC.¹⁷⁶ The next Strategic Plan should contain quantitative goals concerning the reduction or elimination of the core forms of VAC: physical, sexual and psychological. The identification of such goals should be based on baseline data on

¹⁷⁶ UNICEF Strategic Plan 2018-2021: Executive Summary, p.17; Final results framework of the UNICEF Strategic Plan 2018-2021, E/ICEF/2017/18, p.27

prevalence of different forms of VAC for different categories of children (girls or boys, young children/adolescents, etc.)

It also is an aberration that the present UNICEF Strategic Plan contains does not call for the reduction of impunity for VAC, nor for ensuring the access of child victims to child-friendly justice and assistance. Ending Violence Against Children: Six Strategies for Action, as indicated above, called for “improving the prosecution of perpetrators [of VAC]... through specialized prosecutors, police and courts.”¹⁷⁷ The first of the seven INSPIRE strategies adopted in 2016 with UNICEF support calls for “implementation and enforcement of laws”. The Global Partnership to End VAC, launched in 2016 with strong UNICEF support, focuses in part “on legislation and integrated services for preventing and responding to” VAC.

The shift from support for law enforcement and criminal proceedings in the 2006 Strategic Plan to strengthening preventive social measures in the 2013 Strategic Plan is regrettable. Support for community- and family- based preventive measures and strengthening law enforcement are complimentary approaches to the reduction of VAC. Both the UN Study and INSPIRE underline the importance of legislation on VAC as a tool for changing attitudes. It is ironic that UNICEF Strategy moved away from support for law reform, law enforcement and making justice systems more effective and child-friendly just as it was participating in the development of global strategies that call for such measures.

¹⁷⁷ Supra, p.42