Chapter 35

Article 36: The Right to Protection from Other Forms of Exploitation

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

What Did Children Say?

'There should be awareness raising and campaigns through different mediums such as radio, TV, newspapers, forums and blogging on trafficking, abductions, child labour, child marriage and all forms of violation and discrimination against children and youths.' (Africa).

Governments should have a public campaign on child rights and ways persons often harm children. (Latin America/Caribbean).

Children learn where to make reports or seek refuge when these things happen. (Africa).

Government should create a forum where children especially girls and women have a voice to stand strong and say 'No' to violence and abuses against their rights. (Africa).

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Overview

Children should be protected from any activity that takes advantage of them or could harm their welfare and development. Article 36 of the Convention provides for all encompassing fail-safe preventive and protective safeguards against all forms of exploitation and slavery-like conditions everywhere that are not covered by other articles of the Convention.

Initially designed as part of one article combining commercial sexual exploitation of children (Article 34), and abduction of, sale of, and traffic in children (Article 35), to cover sexual and other related forms of exploitation (Office of the United Nations High Commissioner for Human Rights and Rädna barnen (Society: Sweden), 2007, pp. 723–737), drafters of the Convention designed a wider and a fail-safe protection for children. Article 36 was introduced to ensure that the ‘social’ exploitation of children was recognised, along with their sexual and economic exploitation, though examples of social exploitation were not provided (Hodgkin et al., 2007, p. 543). It integrates the other articles of the Convention concerned with the exploitation of children taking place in specific context, namely:

- Article 19 against all forms of violence taking place when in care of parents or other caregivers
- Article 32 against economic exploitation
- Article 33 against the use of children in illicit production and trafficking of drug
- Article 34 against sexual exploitation
- Article 35 against abduction of, sale of, traffic in children (Tobin, 2019, p. 1403)

With increasingly globalised criminal activities and introductions of new technologies, new forms of exploitation are emerging, in addition to traditional forms of trafficking (within and between countries) and sale of children for sexual purposes and forced marriage. Children are exposed to forms of exploitation which are ‘not accompanied by physical force or restraint but which are nonetheless psychologically intrusive, exploitive and traumatic’ (UN Committee on the Rights of the Child, 2011, para. 25). As Tobin clarifies, those ‘new’ forms of exploitation of children will be generally dealt by the above-mentioned provisions of the Convention focused on exploitative practices in combination with Articles 3 and 6 of the Convention, respectively meant to ensure the respect of the best interests principle and the right to survival and development of the child (2019, p. 1403).

However, as a safety net, Article 36 is designed to fill any eventual gap of the Convention in relation to the exploitation of children and, as a consequence, it extends the protection over a variety of forms of exploitations such as exploiting gifted children, media exploitation, commercial and advertising exploitation, medical experimentation, and research activities concerning children in different capacities. For example, as discussed in relation to Articles 16 and 17, children can be exploited by the media by identifying child victims or child offenders, or by securing performances by children without their informed consent, which are potentially harmful to their development (Hodgkin et al., 2007). Children with talents in

competitive sports, games, performing arts, and other fields may have these talents developed by families, the media, businesses, and state authorities at the expense of their overall physical and mental development. With reference to the medical research and experimentation, even though Article 7 of the International Covenant on Civil and Political Rights expressly prohibits medical or scientific experimentation without free consent, children can be exposed to breaches of their privacy, or be required to undertake tasks that breach their rights or are disrespectful of their human dignity (Hodgkin et al., 2007).

At the same time, the wording ‘shall protect’ in Article 36 constitutes a mandatory obligation on States Parties. It demands that they adopt measures to protect children from all other forms of exploitation by setting in place ‘all the appropriate measures to respect, protect and fulfil the right of all children to be protected against exploitation’ including among them preventive measures (Tobin, 2019, pp. 1404–1408).

General Principles

Article 2 Every child is entitled to protection from all forms of exploitation, but certain groups of children are more at risk of exploitation than adults and other children (UN Committee on the Rights of the Child, 2011, para. 72 (g)). States Parties must introduce measures to identify, prevent and protect such children from exploitation.

Article 3 The child’s safety is one of the fundamental tenets of the child’s best interests. Effective preventive and protective measures for children must be taken to guarantee the best interest of the child.

Article 6 All forms of exploitation of children are a threat to the fulfilment of their right to life, survival, and development (UN Committee on the Rights of the Child, 2011, para. 15).

Article 12 Children have rights to access information, including life skills and knowledge to protect themselves from exploitation, and to seek assistance and justice whenever needed.

Articles Related or Linked to Article 36

Article 17 provides that States should encourage and support the provision of information to children from the mass media, and to encourage the development of guidelines to provide children from harmful information that might be exploitative or lead to potential exploitation.

Article 24(3) which requires measures to effectively abolish traditional practices, such as child marriage, which are detrimental to the rights and well-being of children.

Article 26 ensures the child's right to available, accessible, and quality social security in accordance with their circumstances and their care providers' resources, so that the child is less at risk of exploitation (van Bueren, 1998, p. 268).

Article 27 provides for adequate living conditions for the child's physical, mental, spiritual, moral, and social development, as a preventive and protective measure from all forms of exploitation.

Article 32 protects children against trafficking forced labour and slavery-like working conditions.

Article 33 protects from use of children in crimes of illicit substance trafficking.

Article 34 protects children from their use in the sex trade, including prostitution or the production pornography, or through forced marriages.

Article 35 protects against the abduction, sale, and trafficking of children.

Article 39 requires that States Parties provide the child who is exposed to any form of exploitation with physical and psychological recovery and social reintegration.

Optional Protocol on the involvement of children in armed conflict, Article 4, provides that non-state armed forces are barred from using children in armed conflict which extends to exploitation of children for any purposes.

Optional Protocol on the sale of children, child prostitution, and child pornography. The protocol is 'meant to achieve the purposes of the CRC and the implementation of its provisions' including Article 36 (Greijer et al., 2019, p. 21).

Relevant Instruments

UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000).

Hague Convention on the Civil Aspects of International Child Abduction (1980).

Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993).

ILO Convention 182, Worst Forms of Child Labour (1999).

African Charter on the Rights and Welfare of the Child (1990), Articles 27, 28 and 29.

Inter-American Convention on International Traffic in Minors (1994).

Attributes

Attribute One: Monitoring and Identification of All Other Forms of Exploitation Prejudicial to Any Aspects of the Child's Welfare

In fulfilling their preventive role and to develop consistent evidence-based policies, Article 36 requires that States Parties must actively monitor and identify existing, new, and unknown forms of exploitation of children as a preventive and protective measure. This requires regularly reviewing children's well-being in general, children at risk as defined in General Comment no. 13 on violence against children (Office of the United Nations High Commissioner for Human Rights and Rädna barnen (Society: Sweden), 2007) in particular, and also survivors and victims who are exposed to exploitation. These reviews should provide data or support research on new and emerging forms of exploitation. States Parties must work with children, respecting their right to be heard, and undertake monitoring of their well-being and forms of exploitation with children (UN Committee on the Rights of the Child, 2009, paras. 118–122).

Attribute Two: Protection from All Other Forms of Exploitation Prejudicial to Any Aspects of the Child's Welfare

Article 36 asserts that States Parties shall introduce protection measures for children against all other forms of exploitation already identified and addressed. It is a fail-safe protective net for children to eradicate all known forms of exploitation of children and to proactively address unknown forms of exploitation of children. This should include introduction of strict regulatory environments for businesses, including media and other local, national, and international commercial enterprises. In accordance with Article 19 and General Comment no. 13, violence against children, protection measures shall include 'all appropriate legislative, administrative, social and educational measures' (2011, paras. 38–44).

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