

# Chapter 40

## Article 1: Definition of a Child

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1. For the purposes of the present Convention, a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier.

### Overview

While all international human rights treaties apply to children, only the Convention explicitly elaborates who is defined as a child. Article 1 defines the child as a human being who is below the age of 18 years.<sup>1</sup> Majority is set at age 18 unless, under domestic law, it is attained earlier. During the negotiations of the text of the Convention, there was significant debate regarding definitions of both the commencement and the ending of childhood. The initial text, proposed by the Polish Government, drawing on Principle 1 of the UN Declaration of the Rights of the Child, 1959, provided no definition of childhood at all (Office of the United Nations High Commissioner for Human Rights and Rättsutskottet (Society: Sweden), 2007,

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<sup>1</sup> Article 1 is ‘the first definition of the child in international law’ (de Detrick, 1999, p. 52; Vučković-Šahović et al., 2012, p. 85).

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p. 301). However, government delegates on the Working Group immediately highlighted the need for clarification. The first revision of the text therefore proposed that a child is a human being from birth to the age of 18 years unless majority is attained earlier. However, with regard to the beginning of childhood, the Working Group were unable to come to a consensus. An unresolvable division persisted on whether childhood, in respect of the Convention, commenced from the point of conception, or from birth (Office of the United Nations High Commissioner for Human Rights and Rädna barnen (Society: Sweden), 2007, pp. 301–313). The conflict was ultimately resolved by removing any reference to the start of childhood.

On the termination of childhood, an upper age had to be defined. Because childhood is a social construct, there is no shared legal definition (Vučković-Šahović et al., 2012, pp. 1–18). Account needs to be taken of the cultural differences in definitions of childhood, with majority being obtained much earlier in some states, the increasingly early development of children, the heterogeneity of children, and the potentially excessive burden for developing states in providing the protections afforded by the Convention to everyone under the age of 18 years. After some debate by the Working Group, a consensus was forged over a definition that a human being is a child until the age of 18 years. However, the opportunity for attaining majority earlier was retained in the text of Article 1, and in this way, the text seeks to accommodate existing cultural and religious diversities reflected in national age limits (Van Bueren, 1998, p. 37). The Convention therefore is prescriptive, but not inflexible in defining childhood.

In summary, Article 1 establishes the framework of childhood within which to apply the Convention in its entirety. Every person under the age of 18 years, as a consequence of their greater vulnerability, will always be entitled to the overarching special protections foreseen in the Convention (Vučković-Šahović et al., 2012, pp. 85–87). However, Article 1 does not preclude the introduction by States Parties of lower age limits in respect of the exercise of certain rights, in recognition of the evolving capacities of the child.

## General Principles

**Article 2** Every human being under the age of 18 years must be recognised as a child, without discrimination based on any attribute of the child or parent. Importantly, the definition of childhood must extend equally to all genders without discrimination.

**Article 3** The best interests principle must be applied to every child up to the age of 18 years.

**Article 6** The right to life, survival, and development must be recognised for every child under the age of 18 years.

**Article 12** Childhood status as defined under Article 1 does not preclude recognition of the right of the child to express views and have them given due weight in accordance with age and maturity.

## Articles Related or Linked to Article 1

Article 1 is relevant and has application to every article in the Convention, and the Optional Protocols.

## Relevant Instruments

All human rights treaties apply to children but, at the international level, only the Convention defines the child. An exception at the regional level is provided by Article 2 of the African Charter on the Rights and Welfare of the Child (1990) which states that for its purposes, ‘a child means every human being below the age of 18 years.’

## Attributes

### *Attribute One: Ages of Majority*

Article 1 explicitly sets a benchmark of 18 years as the end of childhood. This age limit needs to be applied by States Parties as both a rule and a reference point, for the establishment of any other age for any specific purpose or activity (Pais, 1997, p. 414). The Convention, therefore, needs to be respected, protected, and fulfilled for every child under that age. States Parties are required to review all relevant legislation to achieve that goal in all spheres of the child’s life. The Committee has emphasised, for example, that the definition of a child under customary law must be consistent with Article 1 (2002, paras. 23, 24). The only explicit exception in the Convention arises in Article 38, which provides that the minimum age for participation in hostilities is 15 years.

States Parties can aim for a higher standard of protection by raising the ages defined in the Convention, in accordance with Article 41 which clarifies that nothing in the Convention precludes the retention or introduction by any state of provisions that are more conducive to the rights of the child. Thus, many States Parties have determined that the age of 15 years is too low for participation in hostilities and have raised the age accordingly (Pais, 1997, p. 414). The Optional Protocol on children in armed conflict was drafted to seek to strengthen the provisions in Article 38, by

raising the age limits for protection, although it does still contain significant weaknesses, as discussed in Part 8.

Article 1 does allow for the age of majority to be attained earlier than 18 years. This provision should not be interpreted as a general escape clause from the obligations under the Convention, nor to allow for ages to be established which are inconsistent with its principles and provisions (Pais, 1997, pp. 414–415). The Committee has stressed that where the age of majority is below the age of eighteen years, States Parties are expected to indicate how all children benefit from protection and enjoy their rights under the Convention up to the age of 18 years. The Committee has demanded justification of any diminution in protection of children and urged States Parties to reconsider in order to ensure that all children up to 18 years continue to receive the full protections of the Convention (2009, para. 27, 2010, para. 27, 2012, para. 26). The Human Rights Committee has also emphasised that States Parties cannot absolve themselves from obligations to children under 18 years even where they have reached the age of majority under domestic law (UN Office of the High Commissioner for Human Rights (OHCHR), 1989, para. 4).

### *Attribute Two: Accommodation of Differential Ages*

It is not possible to establish a uniform age for all aspects of the lives of children applicable in every country in the world. The Committee seeks to promote recognition that all children are subjects of the rights under the Convention until the age of 18, and thereby entitled to special protection measures, while simultaneously acknowledging their right to progressively exercise their rights in accordance with their evolving capacities (2003, para. 1). Article 1 therefore does also allow for flexibility in setting up minimum ages for certain purposes.

Some articles specifically recognise the need for States Parties to provide a minimum age, for example, in relation to admission to employment, Article 32, and the establishment of an age of criminal responsibility, Article 40, paragraph 3(a). In other cases, the Convention leaves it open to States Parties to determine, for example, the age for the end of compulsory education, Article 28, and access to medical and legal counselling without parental consent, Article 24. However, the Committee does require that States Parties address these areas of legislation, and that in so doing must have regard to the entire Convention and in particular, the General Principles (Hodgkin et al., 2007, p. 5). The Human Rights Committee has also emphasised that in setting ages below 18 years, such ages must not be set too low (UN Office of the High Commissioner for Human Rights (OHCHR), 1989, para. 4).

In the Committee's periodic guidelines, States Parties are asked to provide relevant and up-to-date information with respect to Article 1 of the Convention concerning the definition of the child in its domestic laws and regulations (2015, para. 2). The only specific requirement demanded by the Committee is for States Parties to indicate the minimum age for marriage for girls and boys in its legislation.

The Committee has strongly argued that this should be 18 years for both girls and boys (2016, para. 40).

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