

GENERAL COMMENT No. 13
Article 19: The right of the child to protection from all forms of violence and maltreatment

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Part 1 - Overview

1. Draft 2 is currently **32 pages long** and is made up of **8 sections plus one appendix** – each of which are summarised in this document:
2. It takes **the text of Article 19** as a starting point.
3. It draws on **global experience** in the field of child caregiving and protection (including, amongst other things, General Comment No. 8 (2006) on Corporal punishment and other cruel or degrading forms of punishment and the UN Study on Violence Against Children).
4. It emphasises the following **key concepts**:
 - o **“No violence against children is justifiable; all violence against children is preventable.”¹**
 - o **A child rights-based approach** to child care and protection.
 - o The **prevention**, through public health and other approaches, of all forms of violence and maltreatment.
 - o The **primary position of families** – including extended families – in child care and protection and in the prevention of violence and maltreatment.
5. The **overall approach to the implementation of Article 19** can be described as follows:

¹ Report of the independent expert for the United Nations Study on Violence against Children (A/61/299) paragraph 1.

All **'measures'** (described in paragraph 1 of Article 19) need to be applied across all **'stages of intervention'** (paragraph 2) through a comprehensive **national plan of action on child care and protection** which mainstreams the following issues: a child rights approach; the gender dimensions of violence and maltreatment; prioritisation of primary prevention; the primary position of families in child care and protection strategies; strengthening resilience and protective factors; minimising risk factors; attention to children in vulnerable situations; and accountability. This is shown in the diagram below.

		'Measures' (Art 19, para 1)			
		Legislative	Administrative	Social	Educational
'Stages of intervention' (Art 19, para 2)	Prevention (with an emphasis on the establishment of social programmes to provide necessary support for the child and for those who have the care of the child)				
	Identification				
	Reporting				
	Referral				
	Investigation				
	Treatment				
	Follow-up				
	Judicial involvement				



- National plan of action on child care and protection**
- Developed collaboratively
 - Coordinated centrally and locally
 - Adequately resourced
 - Which mainstreams:
 - A child rights approach
 - The gender dimensions of violence and maltreatment
 - Prioritisation of primary prevention
 - The primary position of families in child care and protection strategies
 - Strengthening resilience and protective factors
 - Minimising risk factors,
 - Attention to children in vulnerable situations
 - Accountability

Part 2 –Key points from each section of Draft 2 (numbering reflects the paragraph numbers in the full Draft)

A. Introduction

1. **Terminology:** “Violence and maltreatment” is used to mean “all forms” listed in paragraph 1 of Article 19.
2. **Overview:** Elaborates the key concepts underpinning the general comment.
3. **Evolution of GC13:** Refers to the body of relevant CRC Committee work, the UN Study on Violence against Children and the experience of other UN, government and civil society groups.
4. **Article 19 in context:** Recognises the other CRC provisions relating to directly and indirectly to violence and maltreatment, the two CRC Optional Protocols, and other relevant human rights instruments. However, it nonetheless situates Article 19 as a useful focal point for discussions on violence and maltreatment.
5. **Structure:** Explains how GC13 is set out.
6. **Dissemination:** Promotes wide dissemination of GC13, including to children.
7. **Reporting requirements under the Convention:** Outlines what the Committee expects States to report on.

B. Objectives

8. **To provide guidance on addressing violence against children and child maltreatment.**
9. **To promote a holistic approach to implementing Article 19:** Emphasises the need to understand Article 19 within the CRC’s overall perspective on securing children’s rights to survival, dignity, well-being, health and development and to avoid fragmented initiatives, implementing instead a child rights-based, comprehensive national plan of action.
10. **To highlight the urgency.**

C. The need for a general comment on Article 19

11. **Progress so far:** Acknowledges existing initiatives but recognises these are generally insufficient.
12. **The human rights imperative:** Highlights that eliminating violence and maltreatment is an obligation of States Parties under the CRC. All other arguments on the need for a GC (e.g. paragraphs 13-15 below) reinforce but do not replace this imperative.
13. **Survival, health and development – the devastating impact of violence against children:** Outlines the severe negative impact – both short and long-term - of violence and maltreatment on children’s survival and physical, cognitive, social, emotional and moral development.
14. **Social development and contribution – children’s place in the human family:** Emphasises how a respectful, supportive childrearing environment free from violence and maltreatment fosters the development of pro-social, responsible, contributing citizens in local and larger society.

15. The cost of violence against children: Outlines the human, social, and economic costs of denying children's rights to protection (e.g. medical care, legal and social welfare services, alternative protective care, reduced quality of life, disruption of education, loss of future productivity and costs associated with the criminal justice system).

D. Analysis of Article 19

Paragraph 1 - Definitions of violence against children and child maltreatment: 'all forms of...':

16. The need for child rights-based definitions: As well as operational definitions for 'violence' and 'maltreatment', States Parties need to establish national definitions and standards for child well-being, health and development which are the ultimate goal of child care and protection (working towards positive child development, not just prevention of violence and maltreatment).

17. No exceptions: All forms of violence and maltreatment against children, however light, are unacceptable. Frequency, severity of harm and intent to harm the child are not prerequisites for definitions of violence and maltreatment.

18. Standards for operational definitions: Recognises that definitions may vary according to their function and perspective, but they should include: age (CRC Art. 1); non-discrimination (CRC Art.2); and forms of violence and maltreatment (recognising both discreet and 'compound' forms). Severity, frequency, intentionality, who the perpetrator is, and the setting may be calibrated in order to shape appropriate and proportional responses, but not to promote 'acceptability' of any form of violence or maltreatment.

19. Forms of violence and maltreatment - overview: Recognises peer as well as adult violence. Acknowledges co-occurrence of forms and that they can span categories. Paragraphs 20-28 list non-exhaustive examples of the main forms of violence and maltreatment and specific manifestations of these.

20. Physical violence and maltreatment.

21. Corporal punishment.

22. Psychological maltreatment.

23. Sexual violence.

24. Neglect and negligent treatment.

25. Self-harm.

26. Harmful traditional practices.

27. Child maltreatment and information technologies.

28. Specific forms of maltreatment: Children with disabilities, death penalty, mandatory HIV/AIDS testing, hazardous forms of child labour not previously mentioned and trafficking.

Paragraph 1 - Definitions of caregiving settings: "while in the care of..."

29. Definition of 'caregivers': Whilst respecting the progressive autonomy of the child, all under-18s are either: emancipated; in the care of primary or proxy caregivers; or in the de facto care of the State. Provides examples of caregivers. In the case of unaccompanied children, the State is the de facto caregiver.

30. Definition of caregiving settings: Defined as places where children spend time under the supervision of their 'permanent' primary caregiver (e.g.

a parent or guardian) or a proxy or 'temporary' caregiver (e.g. a teacher). Includes periods of transit between caregiving settings (e.g. the journey to and from school) and when children are physically unsupervised within a caregiving setting (e.g. playing out of sight in a bedroom). Provides a list of examples.

31. Children without obvious primary or proxy caregivers: In such cases, even if these children are not yet within the context of physical care settings such as foster homes or NGO facilities, the Committee interprets the phrase "any other person who has the care of the child" to refer to the State, in line with obligations under Articles 3.2 and 20 (although States Parties should not seek to institutionalise unaccompanied children).

32. Perpetrators of violence and maltreatment: May be actual caregivers and/or others who have access to children (e.g. neighbours, peers and strangers).

Paragraph 1 – Obligations of States Parties: "shall take all appropriate...measures"

33. "Shall take": Sets out a strict obligation.

34. General measures of implementation and monitoring: Refers to General Comments No. 5 and No. 2.

35. Allocation of resources: Article 19 is a civil right, requiring immediate and unqualified obligation of States Parties. Whilst respecting the need or international cooperation, national budgets should nonetheless be the primary source of funds.

Paragraph 1 – Child protection systems: "all appropriate legislative, administrative, social and educational measures"

36. "All appropriate...measures": Emphasis on broad-ranging measures, including public health approaches, which cut across all sectors of government and society.

37. An integrated systems approach: An integrated, cohesive, interdisciplinary and coordinated systems approach is required which incorporates the full range of measures (legislative, administrative, social and educational) across the full range of interventions (prevention, identification, reporting, referral, investigation, treatment and follow-up).

38. "Legislative, administrative, social and educational measures": These need to respond, in an integrated way, to the full range of interventions from prevention through to follow-up. Paragraphs 39 – 42 give examples of:

39. Legislative measures: primary and secondary legislation.

40. Administrative measures for: national government level; all levels of government; professionals and institutions (government and civil society).

41. Social measures: social policy measures; social programmes for children and families.

42. Educational measures for: all stakeholders; children; families and communities; professionals and institutions (government and civil society).

Paragraph 2 – Range of child protection interventions: "such protective measures should, as appropriate, include..."

- 43. Range of interventions:** Outlines the need for comprehensive and integrated measures across the full range of stages of intervention.
- 44. "Prevention":** Strong emphasis on proactive prevention of all forms of violence and maltreatment, including measures to positively promote respectful childrearing and to target the root causes of violence and maltreatment. Prevention must be paramount in any policies and strategies. Provides examples of prevention measures for: all stakeholders; children; families and communities; professionals and institutions (government and civil society).
- 45. "Identification":** Differentiates between identification of risk factors and of signs of actual maltreatment and sets out the necessary requirements.
- 46. "Reporting":** Recommends States Parties to develop safe, well-publicized, confidential and accessible mechanisms for children, their representatives and others to report. Mechanisms should be seen as help-oriented services offering public health and social support rather than as being primarily punitive. Outlines what these mechanisms should involve. Promotes mandatory reporting by professionals working directly with children and states that mandatory reporting is sometimes extended beyond this to all citizens.
- 47. "Referral":** Outlines what this involves for the person receiving the report and for inter-sectoral referrals.
- 48. "Investigation":** Outlines what this involves, with an emphasis on role-specific and comprehensive training as well as the need for a child rights-based and child-sensitive approach.
- 49. "Treatment":** This is presented as one of the many accessible, child-sensitive and quality services needed. Refers to Art. 39 and outlines what this might involve and the necessary safeguards.
- 50. "Follow-up of instances of child maltreatment":** Refers to Articles 39, 25 and 9.3. Emphasises the need for continuity and clear stakeholder responsibility between stages of intervention.
- 51. "Judicial involvement":** Outlines safeguards and remedies which need to be in place. Judicial involvement should be positive and preventive where possible, proactively encouraging positive behaviour as well as prohibiting negative behaviour. It should promote a coordinated and integrated approach across sectors. It may include: differentiated and mediated responses (e.g. family group conferencing and restorative justice); juvenile or family court intervention; criminal law procedures; disciplinary or administrative proceedings against professionals.
- 52. "Effective procedures":** Provides examples of "effective procedures" to ensure the enforcement, quality, relevance, access, impact and efficiency of measures taken (inter-sectoral coordination, systematic national disaggregated data collection, development of measurable objectives and indicators etc.).

E. Interpretation of Article 19 in the broader context of the Convention

53. Child rights approach to child protection: Respect for the survival, dignity, well-being, health and development of the child as a rights-bearing person should be established and championed as the pre-eminent goal of child care and protection. Emphasises the need to respect all CRC rights and for a paradigm shift towards children as rights-holders rather than 'victims'. Outlines the importance of Articles 2, 3.1, 4, 5, 6 and 12 to a child rights approach and the need to take into account and reinforce existing strengths.

54. Article 19 linked to other provisions of the Convention: Outlines the 4 groups of CRC rights used for this analysis (see paragraphs 55-64).

55. Group (a): Articles containing rights and obligations identified as principles of relevance to the implementation of the whole Convention: The Committee considers that Articles 4 and 5 merit the same status as Articles 2, 3.1, 6 and 12 as containing rights and obligations identified as principles of relevance to the implementation of the whole CRC.

56. Group (a) continued: Article 2: States Parties must address discrimination against vulnerable or marginalized groups of children and make proactive efforts to ensure that such children are assured their right to protection on an equal basis with all other children.

57. Group (a) continued: Article 3.1: Interpretation of a child's best interests must be consistent with the whole CRC. The best interests of children are best served through: the prevention of all forms of violence and maltreatment and the promotion of positive childrearing; and adequate investment in human, financial and technical resources. Acknowledges the challenges faced in interpreting the 'best interests' in specific child protection cases (e.g. to report or not to report). Outlines guidance on decision-making in the best interests of the child, the need for child rights training of professionals and the need for the development of an *integrated* child protection system where improvements in one area are supported by advancements in other areas.

58. Group (a) continued: Article 4: Implementation of Article 19, as a civil right, is an immediate and unqualified obligation of States Parties.

59. Group (a) continued: Article 5: Implementation of Article 19 requires recognition of, and support for, the primary importance of parents, extended families, legal guardians and community members in the care and protection of children and the prevention of violence and maltreatment, consistent with Art. 5.

60. Group (a) continued: Article 6: Protection must not only be considered in terms of the child's right to "life" and "survival", but also to "development" in the broadest possible sense, compatible with the overall goal of child protection to contribute positively to the survival, dignity, well-being, health and development of the child as a rights-bearing person.

61. Group (a) continued: Article 12: Refers to General Comment No. 12. Article 19 and Article 12 are mutually reinforcing (child participation promotes protection and child protection is key to participation). Stakeholders must have a clear understanding of ethical guidelines in relation to child participation. Addressing barriers to participation faced by particularly marginalised and/or discriminated groups is especially relevant for child protection as such children are often amongst those most affected by violence and maltreatment.

62. Group (b): Lists articles which relate explicitly to violence, maltreatment and child protection: 3.2, 6, 9.1, 17(e), 20.1, 22, 24.2(e), 24.3, 28.2, 32, 33, 34, 35, 36, 37(a), 38, 39, 40.1 and 40.2(b)(iv).

63. Group (c): Lists articles which are strongly related to violence, maltreatment and child protection, even though the reference is not explicit: 1, 3.3, 5, 7, 8, 9.2, 9.3, 9.4, 11, 13, 15, 16, 17 (a-d), 18, 20.2, 20.3, 21, 23, 24.1, 24.2(a-d & f), 24.4, 25, 26, 27, 28, 29, 31, 37(b-d), 40.2(a), 40.2(b)(i-iii, v-vii), 40.3 and 41.

64. Group (d): Lists all other substantive articles in the Convention which require children's protection from all forms of violence and maltreatment as a pre-requisite to their fulfilment and promotion and/or to ensure the protection of children during the exercise of such rights (i.e. Arts. 10, 14, and 30).

F. Comprehensive national plan of action

65. The need for a comprehensive child care and protection plan of action: Existing action plans, programmes and policies often focus only on specific aspects (e.g. trafficking of children). A comprehensive plan should provide for an integrated set of measures (legislative, administrative, social and educational) at each stage of intervention (from prevention through to recovery and reintegration) with effective coordination at central, regional and local levels and with adequate allocation of financial, human and technical resources.

66. Integration of a national plan of action on child care and protection into the broader national strategy on child rights: Refers to General Comment No. 5 on the need for States Parties to develop "a unifying, comprehensive and rights-based national strategy" to promote the provisions in the whole CRC. This overall "strategy" can, however, be elaborated in sectoral national plans of action (e.g. for child care and protection).

67. Different starting points: Acknowledges countries' very different starting points in terms of existing infrastructures, services and professional training, as well as levels of resources potentially available.

68. The process of developing a national plan of action: There is no single model for a child protection system. Emphasises the importance of a well-managed process in developing the plan (e.g. participation and ownership, transparency and inclusiveness, building on existing strengths and identifying and filling gaps). The plan should be accessible and understandable, fully costed (including human and technical resources) and presented within the national child budget.

69. Characteristics of a national plan of action on child care and protection: Includes (e.g.) consulting and cooperating with children; supporting and empowering parents and communities; establishing cooperation between different sectors; capacity building; and a strong programme of accountability.

70. Elements to be mainstreamed into national plans of action on child care and protection: a. A child rights approach; b. The gender dimensions of child maltreatment; c. Prioritisation of primary prevention; d. The primary position of families in child care and protection strategies; e. Identifying and strengthening resilience and protective factors; f. Minimising risk factors; g. Attention to children in vulnerable situations; h. Accountability (Provides details on each of these elements).

71. Suggested framework for a comprehensive national plan of action on child protection: One framework that States Parties can use to help organise these elements of the national plan of action is the UNICEF Protective Environment Framework (PEF).

G. Good practices and overcoming common obstacles

72. Good practices: See the detailed guidance set out in the present general comment, e.g. paragraphs 36-42 (on types of measures), 43-52 (on stages of intervention) and 65-70 on national plans of action.

73. Common obstacles: e.g. fragmented approaches; focus on intervention at the expense of prevention; failure to recognize the gendered aspect of violence and maltreatment and the specific needs of vulnerable populations; and *lack of* - support to families, government commitment, legislation and enforcement, partnership with the media and civil society (including children), capacity building, resource allocation, and a monitoring and oversight framework.

H. Resources for implementation and the need for international cooperation

74. States Parties' obligations: Resource constraints cannot provide a justification for a State Party's failure to take any, or enough, of the measures that are required for child protection.

75. Sources of support: Highlights avenues of international cooperation and assistance e.g.: development cooperation; donor institutions; UN entities; other international and regional bodies, organizations and agencies; collaboration with the Committee and other human rights mechanisms; and incorporation of child protection within poverty reduction strategies, country assessments and development assistance frameworks.

76. Resources needed at the international level: Human resources (e.g. improved communication, cooperation and individual exchange within and between professional associations and civil society groups); financial resources (e.g. improved coordination, monitoring and evaluation of donor aid; further development of financial and human capital analyses; and child protection impact assessments by international financial institutions); technical resources (e.g. evidence-based indicators, systems, models, tools, guidelines, protocols and practice standards; a platform for systematic sharing and accessing of information; and clarity and transparency in budgeting for child rights and child protection).

77. Regional and international cross-border cooperation: Specific legislation, policies and programmes may be required in relation to (e.g.) cross-border disasters, conflict, movement and trafficking of children.