

## VII. International Standards

### Overview

The Democratic Republic of Congo has ratified the principal international treaties that protect the basic and fundamental human rights of children: the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the U.N. Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Convention against Torture), and the U.N. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which has particular relevance for the rights of girls in the DRC.<sup>155</sup> The DRC is also a party to the regional African [Banjul] Charter on Human and People's Rights which protects fundamental civil, political, economic, and social rights and requires the State to ensure "the protection of the rights of the woman and the child as stipulated in international declarations and conventions."<sup>156</sup>

In 2001, the DRC periodic report under the Convention on the Rights of the Child was examined by the relevant U.N. Committee. Specifically on the rights of street children, the Committee concluded the following:

70. The Committee is concerned at the high number and difficult situation of children living in and/or working on the street. The Committee is concerned at, *inter alia*, the lack of access of these children to food and health and education services and the exposure of these children to several risks, including those related to substance abuse, violence, sexually transmitted illnesses and HIV/AIDS. The Committee is concerned in addition at the tendency of the criminal justice system to treat these children as delinquents.

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<sup>155</sup> Convention on the Rights of the Child, adopted November 20, 1989, G.A. Res. 44/25, U.N. Doc. A/RES/44/25 (entered into force September 2, 1990); International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 999 U.N.T.S. 171 (entered into force March 23, 1976); International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 (entered into force January 3, 1976); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted December 10, 1984, G.A. Res. 39/46, U.N. Doc. A/RES/39/46, 1465 U.N.T.S. 85 (entered into force June 26, 1987); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. Res. 34/180, U.N. Doc. A/34/46 (entered into force September 3, 1981).

<sup>156</sup> African [Banjul] Charter on Human and People's Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) (entered into force October 21, 1986), article 18.

71. The Committee urges the State party to strengthen its assistance to children living in and/or working on the street by, *inter alia*, studying the causes and implementing preventive measures and improving the protection of children already in this situation, including through the provision of education, health services, food, adequate shelter and programmes to assist children to leave street life. The Committee urges the State party to ensure that children living/working on the street are not treated as delinquents for acts such as their presence in the street or begging.<sup>157</sup>

Human Rights Watch research in 2005 suggests that the concerns of the Committee have not been met, that the violation of children's rights identified therein persist, and that more effective action must be taken if the rights of these vulnerable children are to be protected.

### ***Rights of Children to Protection from Abuse, including children in custody, or otherwise deprived of their liberty***

The ICCPR, the Convention against Torture, and the Convention on the Rights of the Child require states to prevent torture, defined as any act by which severe pain or suffering is intentionally inflicted on a person for such purposes as obtaining information or a confession, punishing, intimidating, or coercing him or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.<sup>158</sup>

States must also prevent other cruel, inhuman, or degrading treatment or punishment that do not amount to torture.<sup>159</sup> This prohibition applies “not only to acts that cause physical pain but also to acts that cause mental suffering to the victim.”<sup>160</sup> The prohibition on torture and other cruel, inhuman and degrading treatment is absolute and infliction of such treatment cannot ever be justified. While this prohibition extends to all persons in the DRC, based on our research Human Rights Watch is concerned that the

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<sup>157</sup> Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: Democratic Republic of the Congo*, CRC/C/15/Add.153 (July 9, 2001), paras. 70-71.

<sup>158</sup> Convention against Torture, article 1.

<sup>159</sup> Convention against Torture article 16. Article 37 of the Convention on the Rights of the Child and article 7 of the ICCPR also prohibit torture and cruel, inhuman, or degrading treatment or punishment. U.N. Human Rights Committee General Comment 20 concerning torture or cruel treatment or punishment (Forty-fourth session, 1992) provides authoritative guidance on the implementation of ICCPR article 7.

<sup>160</sup> ICCPR General Comment 20 concerning prohibition of torture and cruel treatment or punishment, para. 5.

vulnerability of street children places them at particular risk of abuse of these basic rights.

Many of the instances of police abuse and extortion documented in this report constitute cruel, inhuman, or degrading treatment; in some instances this ill-treatment rises to the level of torture. Beatings by police of children with batons, whips, belts, or other implements that cause children severe pain or suffering and are intended to punish or intimidate children constitute torture. In cases where beatings and harassment of children by police do not rise to the level of torture, they may nevertheless produce a level of physical or mental suffering that constitutes cruel, inhuman, or degrading treatment or punishment. In addition, violence and exploitation of children by parents or guardians in their homes, by pastors or prophets in churches of revival, and by police on the streets or in lockups violate children's right under the Convention on the Rights of the Child to protection 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."<sup>161</sup>

The U.N. Committee on the Rights of the Child has already noted that Congolese children are regularly the victims of cruel, inhuman, or degrading treatment, sometimes constituting torture, committed by, among others, the police, the military, teachers, and family members and has called on the DRC government to strengthen its efforts to address the causes and incidence of these violations with a view to bringing them to an end and preventing reoccurrence.<sup>162</sup> At the end of 2005, the U.N. Committee against Torture also considered the record of the DRC in implementing its obligations under the Convention against Torture.<sup>163</sup> The Committee continued to be concerned about the risk that street children face from torture and other cruel and inhuman treatment. The Committee told the DRC that it must adopt and implement as a matter of urgency all legislative and administrative measures that would protect particularly street children from such abuse, and to ensure their rehabilitation.<sup>164</sup>

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<sup>161</sup> Convention on the Rights of the Child, article 19.

<sup>162</sup> Committee on the Rights of the Child, *Concluding Observations*, CRC/C/15/Add.153, paras. 32-33.

<sup>163</sup> Thirty-Fifth Session of the Committee Against Torture, November 7-25, 2005.

<sup>164</sup> Committee Against Torture, *Conclusions and Recommendations of the Committee Against Torture: Democratic Republic of Congo*, CAT/C/DRC/CO/1/CRP.1 (November 24, 2005), para. 14.

## ***Protection from Sexual Abuse and Exploitation***

In this report, Human Rights Watch has documented the specific problem of sexual abuse and sexual exploitation of street children. Particularly when committed, instigated, or acquiesced to by police officers or other agents of the state, sexual exploitation and abuse can in and of itself amount to torture or cruel and inhuman treatment. Moreover, such abuse and exploitation are also explicitly prohibited by Article 34 of the Convention on the Rights of Child.<sup>165</sup> The Committee on the Rights of the Child has urged the DRC to pursue more vigorously the prosecution of adults who engage in sexual abuse and exploitation<sup>166</sup> and the U.N. Human Rights Committee has asked the DRC government to provide it with further information on incidents of abuse of street children by the police and on the forcing of girls into prostitution. In order to assess the extent to which the DRC is meeting its obligations under the ICCPR, the Committee has requested the DRC to provide specific information on the steps being taken to stop these practices, punish the perpetrators, and help the victims.<sup>167</sup> The U.N. Committee on the Elimination of Discrimination Against Women has also expressed its concern about the number of girls in the DRC forced into prostitution, often through poverty, and for some time has recommended to the DRC to adopt and enforce laws prohibiting the prostitution of girls and to assist girls forced into prostitution, having specific regard to the risk of HIV infection and their health needs.<sup>168</sup>

## ***Arbitrary Arrest and Detention***

The ICCPR, the Convention on the Rights of the Child, and the African Charter on Human and People's Rights prohibit all arbitrary or unlawful deprivations of liberty.<sup>169</sup> There are also a number of U.N. instruments that provide authoritative guidance under

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<sup>165</sup> Article 34, "States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: (a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices; (c) The exploitative use of children in pornographic performances and materials."

<sup>166</sup> Committee on the Rights of the Child, *Concluding Observations*, CRC/C/15/Add.153, para. 47.

<sup>167</sup> U.N. Human Rights Committee, *List of issues to be taken up in connection with the consideration of the third periodic report of the Democratic Republic of the Congo*, CCPR/C/COD/Q/3 (December 7, 2005), para. 20.

<sup>168</sup> Committee on the Elimination of Discrimination against Women, *Report of the Committee on the Elimination of Discrimination against Women*, 22<sup>nd</sup> Session, A/55/38, (January 17–February 2, 2000) paras. 219-220.

<sup>169</sup> ICCPR, articles 9(1) and 9(3) and Convention on the Rights of the Child, article 37(b). The U.N. Human Rights Committee, in its authoritative interpretation of the article 9 right to liberty and security, states that article 9(1) is "applicable to all deprivations of liberty, whether in criminal cases or in other cases such as, for example, mental illness, vagrancy, drug addiction, educational purposes, immigration control, etc." U.N. Human Rights Committee, General Comment 8: Right to liberty and security of persons (Art. 9), Sixteenth session, (June 30, 1982), para. 1.

international law for interpreting the U.N. treaties' provisions relevant to the treatment of children in conflict with the law.<sup>170</sup>

Arrest campaigns that round up large numbers of children without distinction are by their nature arbitrary and unlawful, as are arrests intended to extort money or information from children. Even when arrest or detention of children accused of vagrancy or begging is not conducted in an arbitrary manner, it may still be unlawful if children are held for several days in custody without being charged with an offense. The government of the Democratic Republic of the Congo advised the U.N. Committee on the Rights of the Child in 2001 that vagrancy laws are not applied against street children, and that street children were only arrested when committing an offence.<sup>171</sup> Human Rights Watch research in 2005 suggests that this is not the case, at least in the urban areas where the research was conducted, and that many children are still detained under the vagrancy laws. Human Rights Watch urges that this law be repealed or at a minimum amended to prevent its use against street children.

The Convention on the Rights of the Child specifies that deprivation of liberty of children "shall be used only as a measure of last resort and for the shortest appropriate period of time," and that "[e]very child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action."<sup>172</sup> As this report documents, the government's policy of routinely holding in custody children accused of vagrancy and begging violates the principle that detention should only be used as a measure of last resort.

The ICCPR guarantees all persons deprived of their liberty the right to be treated with humanity and respect at all times, and for accused persons to be segregated from

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<sup>170</sup> See the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), G.A. Res. 40/33, annex, 40 U.N. GAOR Supp. (no. 53), U.N. Doc A/40/53 (1985); the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines), G.A. Res. 45/112, annex, 45 U.N. GAOR Supp. (no. 49A), U.N. Doc A/45/49/ (1990); the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (The U.N. Rules), G.A. Res. 45/113, annex, 45 U.N. GAOR Supp. (no. 49A), U.N. Doc. A/45/49 (1990); the United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of July 31, 1957 and 2076 (LXII) of May 13, 1977; the Basic Principles for the Treatment of Prisoners, G.A. Res. 45/111, December 14, 1990; and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. Res. 43/173, December 9, 1988.

<sup>171</sup> Committee on the Rights of the Child, *Summary record of the 706<sup>th</sup> Meeting: Democratic Republic of Congo*, Twenty-seventh session, CRC/C/SR.706 (June 3, 2002), para. 12.

<sup>172</sup> Convention on the Rights of the Child, articles 37(b) and 37(d).

convicted persons.<sup>173</sup> In recognition of the special vulnerability of children in custodial care, the ICCPR and the Convention on the Rights of the Child provide additional protections to every child deprived of liberty, including the right for both accused and convicted children to be separated from adults, and the right to be treated in a manner that takes into account the needs of persons of his or her age.<sup>174</sup> The U.N. Rules for the Protection of Juveniles Deprived of their Liberty provide authoritative guidance on the minimum factors to be taken into account when determining these needs:

The detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations. The principal criterion for the separation of different categories of juveniles deprived of their liberty should be the provision of the type of care best suited to the particular needs of the individuals concerned and the protection of their physical, mental and moral integrity and well-being.<sup>175</sup>

As this report documents, the police's routine mixing of children with unrelated adult criminal detainees, as well as the mixing of children of different ages, backgrounds, and legal status during detention, places children at risk of torture, ill-treatment, and exploitation, and violates children's right to be held separately from adults and to be treated with humanity and respect and in a manner which takes into account their needs. Such practices also violate children's right to protection 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."<sup>176</sup> Insofar as many children who are detained under the offense of vagrancy or begging are by definition entitled to "special

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<sup>173</sup> Article 10(1) of the ICCPR states: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." Article 10(2)(a) states: "Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons."

<sup>174</sup> Convention on the Rights of the Child article 37(c) states: "Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances." ICCPR article 10(2)(b) states: "Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication," while article 10(3) requires that "[j]uvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status."

<sup>175</sup> The U.N. Rules, article 28.

<sup>176</sup> Convention on the Rights of the Child, article 19.

protection and assistance provided by the state,” these abuses are particularly egregious.<sup>177</sup>

Conditions of extreme crowding in detention facilities and the conditions in adult police lockups in the Democratic Republic of Congo are acknowledged to violate international minimum standards for facilities and services.<sup>178</sup> In particular when children are placed in these conditions their health and well being are endangered and their right under the Convention on the Rights of the Child to be treated with humanity and respect for the inherent dignity of the human person is violated. Such conditions also facilitate the spread of disease, and may contribute to violence among detainees.<sup>179</sup> International standards require that children deprived of their liberty “have the right to facilities and services that meet all the requirements of health and human dignity.”<sup>180</sup> The U.N. Committee Against Torture has called on the DRC to take immediate measures to ensure that these conditions are changed to meet the minimum standards, and that children are held separately from adults.<sup>181</sup>

Finally, the sequestration of children in churches of revival, sometimes for days at a time, is an unlawful deprivation of their liberty. The prevalence of this practice and the failure of the state to effectively prevent such sequestration and prosecute violations amount to a violation of the state’s obligations to protect children from such arbitrary detention.

## **Education**

The right to education is enshrined in numerous international human rights instruments, including the Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child.<sup>182</sup> These instruments specify that primary education must be “compulsory and available free to all.” Unique among the rights enshrined in the Covenant on Economic, Social and Cultural Rights, the right to primary education is subject to a special provision

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<sup>177</sup> “A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.” Convention on the Rights of the Child, article 20(1).

<sup>178</sup> Committee Against Torture, *Conclusions and Recommendations*, CAT/C/DRC/CO/1/CRP.1, para. 11.

<sup>179</sup> Convention on the Rights of the Child, article 37(c).

<sup>180</sup> The U.N. Rules, paras. 30 and 33.

<sup>181</sup> Committee Against Torture, *Conclusions and Recommendations*, CAT/C/DRC/CO/1/CRP.1, para. 11.

<sup>182</sup> Universal Declaration of Human Rights, adopted December 10, 1948, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948), art. 26; International Covenant on Economic, Social and Cultural Rights (ICECSR), adopted December 16, 1966, G.A. Res. 2200A (XXXI), 993 U.N.T.S. 3 (entered into force January 2, 1976), art. 13; Convention on the Rights of the Child, adopted November 20, 1989, G.A. Res. 44/25, U.N. Doc A/REX/44/25 (entered into force September 2, 1990), art. 28.

that obligates states “to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.”<sup>183</sup>

The right to education is also recognized in the African Charter on Human and People’s Rights.<sup>184</sup> As outlined in this report, many children began looking for work or spending time on the streets because they were not in school. The high drop out-rate, and the high proportion of children—particularly girls—who never attend school is a matter of grave concern to the U.N. Committee on the Rights of the Child, which has noted that in practice in the DRC primary education is not free, and that the cost of fees, uniforms and equipment remain too expensive for most families. The Committee has called on the DRC to establish a minimum age for the completion of compulsory education and to move towards genuine free primary education, with emphasis on assisting children from the most disadvantaged backgrounds (as children who become street children often are).<sup>185</sup> School fees or related costs of education should never result in the denial of the right to education and push children towards a life on the street. By ensuring that the maximum number of children can go to school in the DRC through progressively reducing and eliminating the costs of primary education as a barrier, the government can fulfill its human rights obligations and help prevent future generations of children from ending up on the streets.

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<sup>183</sup> ICESCR, art. 14.

<sup>184</sup> African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990), entered into force November 29, 1999, to which the DRC is a Party also calls in Article 11 on states to “provide free and compulsory basic education” and to “ensure equal access to education for all sections of the community.”

<sup>185</sup> Committee on the Rights of the Child, *Concluding Observations*, CRC/C/15/Add.153, paras. 60-61, see also, Committee on the Elimination of Discrimination against Women, *Report of the Committee*, A/55/38, para. 223.