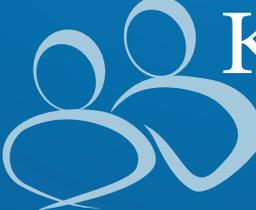


GPV/KCV
and the
United Nations
Convention
on the
Rights of the Child

grandparents
VICTORIA



 Kinship
Carers
VICTORIA



Adopted and opened for signature,
ratification and accession by
General Assembly resolution 44/25 of
20 November 1989

Entry into force 2 September 1990, in
accordance with article 49



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INTERNATIONAL SUPPORT FOR THE CONVENTION

The Convention on the Rights of the Child is an international treaty which was adopted by the United Nations on 20 November 1989. It establishes global standards to ensure the protection, survival and development of all children, without discrimination.

Countries that ratify the treaty pledge to protect children from economic and sexual exploitation, violence, and other forms of abuse, and pledge to advance the rights of children to education, health care and a decent standard of living. The convention also addresses other rights, including children's right to a name and nationality, their right to be heard, and their right to be fairly treated when accused of offenses and when deprived of parental care.

The Convention on the Rights of the Child is the most widely and rapidly ratified human rights treaty, with only two countries, Somalia and the United States, not ratifying it. Somalia was unable to proceed to ratification as it has no recognised government. America signed the Convention in 1995 but never ratified it because the process for treaty ratification is difficult in America: the president must send treaties to the Senate, where they require approval by a two-thirds majority.

Australia signed the convention on 22 August 1990 and ratified it on 17 December 1990.

When considering the difficult circumstances experienced by some of the countries that have ratified the Convention, it is easy to understand that adherence to both the spirit and letter of the treaty will take time, vigilance and concerted effort.

The work to keep the Convention front and centre in the discourse about what is needed to keep children safe and well is crucial.

This paper is issued by Grandparents Victoria and Kinship Carers Victoria (GPV/KCV) in order to commend the UN Convention on the Rights of the Child to its members and the wider public.

Protection of human rights is important work and GPV/KCV believes that the best place to start is with the protection of children's and family rights.

GPV/KCV believes that Australia needs to improve its observation and support of children rights.

GPV/KCV SUPPORT FOR THE CONVENTION

Over the years GPV/KCV has reviewed the articles of the United Nations Convention on the Rights of the Child (UNCRC) in order to identify those articles which have most connection with the lives of children and their families. Whenever an extraordinary issue presents itself, GPV/KCV looks to the Convention for guidance. The articles outlined in this section are those considered to be of utmost importance in the context of contemporary issues.

The articles emphasised in 2012 focus on ongoing concerns GPV/KCV has. For example, children's rights to education is one of the founding issues upon which GPV/KCV bases its work.

The articles emphasised in 2013 were flagged at an international meeting – hosted in London by GPV/KCV – of kinship care organisations from several countries. This meeting issued the Woking Declaration on Kinship Care, a declaration outlining the articles most effecting the work of kinship carers from the five countries represented at the meeting.

In 2014 the GPV/KCV Board agreed to conduct a postcard campaign protesting against the detention of refugee children by the Australian Government. Also in 2014 a campaign based on Article 31, regarding a child's right to play, was agreed upon as a result of GPV/KCV's membership of the International Play Association.

In 2015 GPV/KCV was concerned with changes to Victorian legislation regarding permanency objectives in out of home care. GPV/KCV was particularly disturbed by suggestions that the changes to permanency guidelines might lead to an increase in children in out of home care being placed for adoption or in permanent placements away from their biological families.

In 2016 at a Children's Matters forum¹ Justice Alastair Nicholson AO RFD QC² noted that a number of articles in the UNCRC had been breached through changes to Victorian state legislation that came into full effect in March 2016. The legislation affected included the following:

- *The Children, Youth and Families Amendment Act 2013*
- *The Justice Legislation Amendment (Cancellation of Parole and Other Matters) Act 2013*, (particularly Section 3: amendments relating to the legal representation of children)
- *The Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014*.

In 2017 a number of reports were conducted into issues of child protection in Victoria, beginning with three reports in the early months of the year on issues relating to youth justice, and ending with three reports into kinship care. These reports included:

- *Care Not Custody: A new approach to keep kids in residential care out of the criminal justice system*, conducted by Victoria Legal Aid, and published January 2017
- *Report on Youth Justice*, Victorian Ombudsman, February 2017
- *The Same Four Walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*. Commission for Children and Young People, March 2017
- *Safe and Wanted. Inquiry into the implementation of the Children, Youth and Families*

¹ Children's Matters is a forum of organisations concerned about changes to the Children Youth and Families Act passed in 2014/14 and brought into force in March 2016. The members are: Law Institute of Victoria, Berry Street, Victorian Aboriginal Child Care Agency, Office of the Public Advocate, Mental Health for Youth and their Families, and Kinship Carers Victoria.

² 'The rule of law and the importance of judicial oversight in care arrangements.' Keynote address made to the Children's Matters Seminar, 29 February 2016.

Amendment (Permanent Care and Other Matters) Act 2014, Commission for Children and Young People, June 2017.

- Child Protection Legal Aid Services Review, Victoria Legal Aid, October 2017.
- Investigation into the financial support provided to kinship carers, Victorian Ombudsman, December 2017.

THE IMPORTANCE OF FAMILY IN THE UNCRC

Central to the beliefs of GPV/KCV is the right of children to know and be cared for by their family. The UNCRC spells out the rights of children to maintain close contact with their family in various articles throughout. These articles include phrases such as:

- '... the right to know and be cared for by his or her parents' (Article 7 – Registration and the Right to a Name, Nationality and Care)
- '... the right of the child to preserve ... family relations as recognized by law without unlawful interference' (Article 8 – Identity)
- 'A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents' (Article 10 – Family Reunification)
- '... due regard shall be paid to the desirability of continuity in a child's upbringing' (Article 20 – Protection by the State)
- '... assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family' (Article 22 – Refugee Status)
- '... the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances' (Article 37 – Children and Liberty)

A number of articles also require that states develop programs to assist families to remain together by providing financial assistance for items such as education, health care, child care, nutrition, clothing and housing, where the child's parents or carers cannot afford to provide these.

GPV/KCV notes with concern that changes to the CYF have resulted in fewer families being reunited, as cited by the Victorian Commission for Children and Young People:

The Commission is concerned that the permanency amendments have not led to an increase in reunifications. Rather, there was an 11 percent decrease in the number of children reunified with their parents by the Department following the commencement of the permanency amendments.³

The following pages outline the UNCRC articles identified by GPV/KCV in the years from 2004 to 2018 as being the most crucial.

³ Safe and Wanted Inquiry into the implementation of the *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014*. Commission for Children and Young People, June 2017.

Article 3 – Responsibilities of Institutions

In 2015 GPV/KCV formalised its concerns that the *Children's Youth and Families Amendment Act 2013* (Vic) (CYF) breached this UNCRC article.

According to Justice Alastair Nicholson: 'The Act contravenes Article 3 by interfering with the Court's ability to determine an individual child's best interests on a case by case basis.'

Complaints received by GPV/KCV about the Department of Health and Human Services (DHHS) also show that section 3 of this article is not being adhered to, particularly the stipulation in the article about the 'number and suitability of their staff'. Carers regularly contact GPV/KCV to report that they have difficulty getting a response from DHHS workers, and are often referred to GPV/KCV for answers to questions that DHHS workers should be able to answer.

Article 7 – Registration and the Right to a Name, Nationality and Care

In 2012 Articles 7 and 8 were affirmed by GPV/KCV because they both relate to one of a child's most basic human rights – the right to have a strong sense of identity. These articles are of particular concern to GPV/KCV in the context of adoption and the 'legal' alterations made to a child's identity at the time of adoption.

Article 8 – Identity

Many adoptees of the past have reported that they have felt a loss of sense of identity, both through being deprived of their original birth name, and through the loss of connection with their extended family and that family's culture. The risk of this sense of loss is particularly acute in cases of international adoptions.

Article 9 – Separation from Parents

This article was endorsed by GPV/KCV in 2016, after a Children's Matters forum⁴ at which Justice Alastair Nicholson AO RFD QC⁵ noted that a number of the articles of the UNCRC had been breached by changes to Victorian Government legislation that had come into full effect. Justice Nicholson noted that:

The CYF Act 2014 (Vic)⁶ is in serious breach of the requirements of this article, as are the two 2013 acts in question. The operative words in Article 9.1 are that competent authorities must decide that such separation is in the best interests of the child and most importantly, that decisions must be subject to judicial review.

All of the relevant acts are in breach of Article 9.2 requiring that all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

GPV/KCV believes that it is the right of every child to participate in making decisions about his or her own life. It is also essential to have input from a variety of sources close to a child, including parents, grandparents and other extended family members, educators, medical professionals and child protection practitioners.

⁴ Children's Matters is a forum of organisations concerned about changes to the Children Youth and Families Act passed in 2014 and brought into force in March 2016. The member organisations are: Law Institute of Victoria, Berry Street, Victorian Aboriginal Child Care Agency, Office of the Public Advocate, Mental Health for Youth and their Families, and Kinship Carers Victoria.

⁵ 'The rule of law and the importance of judicial oversight in care arrangements.' Keynote address made to the Children's Matters Seminar, 29 February 2016.

⁶ *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014.*

Article 12 – Children’s Own Voice

This article was first endorsed by GPV/KCV at a meeting in London in 2013 and subsequently reindorsed in 2016 when Justice Nicholson noted that:

The Justice Act 2013 (Vic)⁷ assumes that a child under 10 is incapable of giving instructions of any kind, without regard to considering the individual child and removes their right to be heard. The CYF Act 2013⁸ also has the effect of reducing the child’s opportunity to be heard.

GPV/KCV believes that all children have the right to have their views represented in decisions which impact on their lives. Further, all children have the right to representation in decision-making processes by an independent advocate such as a lawyer or guardian ad litem

Article 18 – Child-Rearing Responsibilities

This article was endorsed by GPV/KCV in 2016, after the Children’s Matters forum at which Justice Alastair Nicholson AO RFD QC noted that a number of the articles of the UNCRC had been breached by changes to Victorian Government legislation that had come into full effect. Justice Nicholson noted that:

Article 18.2 is important for present purposes because of the obligation to support parents. It can hardly be consistent to provide, as this legislation does that after 12 months, or in exceptional circumstances 24 months, the obligation to support parents or guardians ceases.

GPV/KCV agrees that in cases where a child is unable to live with his or her parents, the Victorian Government and DHHS should be responsible for supporting carers to keep children together within the family home, or that of the extended family. This support may take the form of financial assistance, or services such as counselling.

In 2017–18, the provision of childcare services for kinship carers is an emerging issue.

Article 19 – Protection from Violence, Abuse, Maltreatment

In 2013 GPV/KCV received a record number of complaints about the DHHS in relation to:

- funding for special needs
- inadequate assessments

At the forum Justice Nicholson stated that:

This article states a primary responsibility of DHHS, but it is hardly consistent with it to make arbitrary provisions without regard to the needs of the individual child, as this legislation does. The 2014 Act seems more directed at the convenience of the Department than considerations of the child’s individual needs or to promote the child’s relationship with parents.

Article 20 – Protection by the State

This article was first endorsed by GPV/KCV at a meeting in London in 2013. Section 3 provides that ‘... due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background’.

GPV/KCV believes that the best way to ensure this continuity is to place children with members of their extended family if they cannot remain with their parents.

⁷ Justice Legislation Amendment (Cancellation Of Parole And Other Matters) Act 2013, Section 3: amendments relating to the legal representation of children.

⁸ Children, Youth And Families Amendment Act 2013.

This article is important in the case of Indigenous children. The year 2018 marks the tenth anniversary of the Federal Government's apology to the Stolen Generations, and yet statistics show that more children are being removed from Indigenous families today than were removed at the height of the Stolen Generations era.⁹

Article 21 – Adoption

In 2016 GPV/KCV concerns about adoption heightened. A report into adoption practices in Australia¹⁰ found that adoptees frequently reported a loss of their sense of identity after learning that they had been adopted, and reported having feelings of mistrust and difficulty connecting with others.

Further, GPV/KCV continues to hold concerns for the loss of connection to family and culture that arises when children are adopted away from the community and family in which they were born.

The UNCRC insists that among other safeguards to be established before an adoption takes place, it should be ensured that 'persons concerned have given their informed consent'. The practice of placing children for adoption by strangers for reasons of child protection is inconsistent with this safeguard. The practice is also of concern because whilst parents may be asked for their consent, there are no provisions in the current Victorian adoption legislation for grandparents or other extended family members to consent to an adoption.

In the 'Safe and Wanted' report, the Victorian Commissioner for Children and Young People stated that, '[I]n light of the widespread community concern, particularly for Victoria's Aboriginal community, and the evidence that adoptions are not occurring in practice, the Commission recommends that it be removed from the hierarchy of permanency objectives.'¹¹

This request comes in light of fears that a second Stolen Generation might be created through placing adoption at the top of the hierarchy of permanency objectives.

Article 22 – Refugee Status

In 2014 GPV/KCV campaigned for the removal of refugee children from detention centres under Australian control, whether those centres were on Australian soil or offshore.

Article 27 – Standard of Living

This article was first endorsed by GPV/KCV at a meeting in London in 2013 and subsequently reindorsed in 2016 when Justice Nicholson noted that:

'Article 27 says that children have the right to a standard of living that is good enough to meet their physical and mental needs and that the Government should help families to provide this.'

GPV/KCV agrees that the Victorian Government and DHHS should be responsible for supporting carers to keep children together within the family home, or that of the extended family. This support may take the form of financial assistance, or services such as counselling.

This article came to prominence again in 2017 after the release of the Victorian Ombudsman's report detailing issues faced by Victorian kinship carers in obtaining reimbursement payments from DHHS.¹²

9 <https://www.theguardian.com/australia-news/2018/jan/25/indigenous-children-in-care-doubled-since-stolen-generations-apology>

10 Impact of Past Adoption Practices: A report to the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs. Australian Institute of Family Studies, March 2010.

11 'Safe and Wanted' Inquiry into the implementation of the *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014*. Commission for Children and Young People, June 2017.

12 Investigation into the financial support provided to kinship carers. Victorian Ombudsman, December 2017.

Article 28 – A Child's Right to Education

In 2012 GPV/KCV noted this article as concerning one of the most essential factors in setting up a child for future success in life.

Article 28a is of particular note, as it concerns the appropriate discipline of children in schools, which should be 'administered in a manner consistent with the child's human dignity.'

Article 30 – A Child's Right to Enjoy Minority Group Culture

In 2012 GPV/KCV identified this article as particularly important in the context of the Stolen Generations and international adoption.

GPV/KCV believes that children have the right to maintain connections with the community in which they were born, and that removing them from these communities in the name of child protection should be used only as a last resort.

Article 31 – A Child's Right to Play

In 2004 GPV/KCV first identified the right to play as a critical article in the UNCRC.

In 2014 GPV/KCV conducted a survey of grandparents the findings of which showed that grandparents are concerned about the quality of play activities enjoyed by today's children. Most apparent was the observation by grandparents that many children do not enjoy enough outdoor adventure play.

Article 34 – Protection from Sexual Exploitation

In 2016 GPV/KCV identified this issue as one of the most pressing. The uncovering of the extent of the sexual abuse of children across Australia was alarming and a cause for strong action countrywide.

Article 37 – Children and Liberty

In 2017 Articles 37 and 40 were endorsed by GPV/KCV after concerns were raised by a number of reports into the juvenile justice system, particularly the operation of Youth Justice Centres.¹³

Concerns in relation to this article included the following:

- Children in residential care facilities being reported to police and charged for minor infractions
- Children being kept in isolation in adult prisons
- Children being kept in lockdown for 23 hours a day due to inadequate supervision
- Children having inadequate access to educational and mental health programs to assist in rehabilitation.

In particular, GPV/KCV holds concerns about the implementation of Section 4 of UNCRC Article 40 in Victoria. This section asks that alternatives to institutional care be considered when dealing with children facing criminal charges, and that counselling and educational programs (among others) be made available to children in the youth justice system.

Article 37 also raises the issue of torture, inhuman or degrading treatment. GPV/KCV considers female genital mutilation to come under this heading, and in 2018 intends to campaign against this practice.

GPV/KCV believes that corporal punishment is never appropriate, as it can cause lasting physical and mental damage to children, and normalises violence in the home, which is completely unacceptable.

¹³ As listed in the notes on the articles selected.

Article 39 – Recovery and Reintegration

In 2016 this article was noted by GPV/KCV, as the organisation became aware of increasing cases where children being raised by kinship carers continue to suffer symptoms of trauma for years after being removed from the situation of neglect or abuse in which they were being raised.

Article 40 – Children and Legal Proceedings

See notes for Article 37.



THE ARTICLES IN THE UN CONVENTION OF THE RIGHTS OF THE CHILD

GPV/KCV has produced this paper in order to observe Article 42 of the Convention, which urges that the principles and provisions of the Convention be widely known to adults and children alike.

Articles 1 and 2 are not reproduced in this paper because they are establishment articles stipulating that all children and young people under 18 years of age, no matter who they are, where they live, or what their parents do or their cultural backgrounds have the rights expressed in the Convention.

Articles 3–5 are not reproduced in this paper because they are establishment articles stipulating that adults must do what is best for children and young people and ensure that their rights are protected. Governments must help families to protect children and young people and create an environment where this can happen. However, in the case of Article 3 it should be noted that GPV/KCV shares the views of Justice Alistair Nicholson, who argues that the current *Children's Youth and Families Amendment Act 2013 (Vic) (CYF)* breaches this article.

Articles 43–54 are not reproduced in this paper because they relate to how organisations and governments should work to ensure that children are protected and the rights of children upheld.

Article 41 states that nothing in the present Convention shall affect any provisions which are more conducive to the realisation of the rights of the child and which may be contained in:

- (a) The law of a State party; or
- (b) International law in force for that State.

GPV/KCV does not believe that children's rights are being upheld to a higher standard than the Convention and will continue to argue for closer observance of the articles enshrined within it.

Articles 6–40 outlined below address substantive and contemporary issues and must be constantly reviewed. Those articles whose headings are shaded are those given priority by GPV/KCV.

ARTICLES 6–40

Article 6 - A Child's Inherent Right to Life

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7 - Registration and the Right to a Name, Nationality and Care

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national laws and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8 - Identity

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations, as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9 - Separation from Parents

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.
4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family, unless the provision of the information would be detrimental to the wellbeing of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10 - Family Reunification

1. In accordance with the obligation of States Parties under Article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants or for the members of their family.
2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under Article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order, public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11 - Illicit Transfer of Children

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12 - Children's Own Voice

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13 - Freedom of Expression

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others; or
 - (b) For the protection of national security or of public order, or of public health or morals.

Article 14 - Freedom of Beliefs and Religion

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her rights in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15 - Freedom of Association

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16 - Protection of Privacy

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

Article 17 - Access to Information and Media

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral wellbeing and physical and mental health. To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of Article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of a child who belongs to a minority group or who is Indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her wellbeing, bearing in mind the provisions of Articles 13 and 18.

Article 18 - Child-Rearing Responsibilities

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19 - Protection from Violence, Abuse, Maltreatment

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.

Article 20 - Protection by the State

1. 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.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21 - Adoption

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
- (b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
- (e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22 - Refugee Status

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.
2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child

and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23 - Disabled Children

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24 - Health and Treatment of Illness

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25 - Review of Treatment and Other Circumstances

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26 - A Child's Right to Social Security

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27 - Standard of Living

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28 - A Child's Right to Education

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) Make educational and vocational information and guidance available and accessible to all children;
- (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29 - General comment on Implementation of Education

1. States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30 - A Child's Right to Enjoy Minority Group Culture

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin

exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31 - A Child's Right to Play

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32 - Children and Employment

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular: (a) Provide for a minimum age or minimum ages for admission to employment;

(b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33 - Protection from Narcotic Drugs

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34 - Protection from Sexual Exploitation

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.

Article 35 - Prevention of the Abduction and Trafficking of Children

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36 - Other Protection

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

Article 37 - Children and Liberty

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily.

The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) 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;

(d) Every 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.

Article 38 - Children and Armed Conflict

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39 - Recovery and Reintegration

States Parties shall 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. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40 - Children and Legal Proceedings

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their wellbeing and proportionate both to their circumstances and the offence.

COUNTRIES THAT HAVE ENDORSED THE CONVENTION



Afghanistan
Albania
Algeria
Andorra
Angola
Antigua/Barbuda
Argentina
Armenia
Australia
Austria
Azerbaijan

Bahamas
Bahrain
Bangladesh
Barbados
Belarus
Belgium
Belize
Benin
Bhutan
Bolivia
Bosnia/Herzegovina
Botswana
Brazil
Britain and Northern Ireland
Brunei Darussalam
Bulgaria
Burkina Faso
Burundi

Cabo Verde
Cambodia
Cameroon
Canada
Central African Republic
Chad
Chile
China
Colombia
Comoros
Congo
Cook Islands
Costa Rica
Côte d'Ivoire

Croatia
Cuba
Cyprus
Czech Republic
Congo

Denmark
Djibouti
Dominica
Dominican Republic

Ecuador
Egypt
El Salvador
Equatorial Guinea
Eritrea
Estonia
Ethiopia

Fiji
Finland
France

Gabon
Gambia
Georgia
Germany
Ghana
Greece
Grenada
Guatemala
Guinea
Guinea-Bissau
Guyana

Haiti
Holy See
Honduras
Hungary

Iceland
India
Indonesia
Iran
Iraq

Ireland
Israel
Italy

Jamaica
Japan
Jordan

Kazakhstan
Kenya
Kiribati
Korea
Kuwait
Kyrgyzstan

Lao People's Democratic Republic
Latvia
Lebanon
Lesotho
Liberia
Libya
Liechtenstein
Lithuania
Luxembourg

Madagascar
Malawi
Malaysia
Maldives
Mali
Malta
Marshall Islands
Mauritania
Mauritius
Mexico
Micronesia
Monaco
Mongolia
Montenegro 13
Morocco
Mozambique
Myanmar

Namibia

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|---------------------|--------------------------------|---|
| Nauru | Samoa | Thailand |
| Nepal | San Marino | The former Yugoslav Republic of Macedonia |
| Netherlands | Sao Tome and Principe | Timor-Leste |
| New Zealand | Saudi Arabia | Togo |
| Nicaragua | Senegal | Tonga |
| Niger | Serbia | Trinidad and Tobago |
| Nigeria | Seychelles | Tunisia |
| Niue | Sierra Leone | Turkey |
| Norway | Singapore | Turkmenistan |
| | Slovakia | Tuvalu |
| Oman | Slovenia | |
| | Solomon Islands | Uganda |
| Pakistan | Somalia | Ukraine |
| Palau | South Africa | United Arab Emirates |
| Panama | South Sudan | United Kingdom |
| Papua New Guinea | Spain | United States of America |
| Paraguay | Sri Lanka | Uruguay |
| Peru | St. Kitts and Nevis | Uzbekistan |
| Philippines | St. Lucia | |
| Poland | St. Vincent and the Grenadines | Vanuatu |
| Portugal | State of Palestine | Venezuela |
| | Sudan | Viet Nam |
| Qatar | Suriname Swaziland | |
| | Sweden | Yemen |
| Republic of Korea | Switzerland | |
| Republic of Moldova | Syrian Arab Republic | Zambia |
| Romania | | Zimbabwe |
| Russian Federation | Tanzania | |
| Rwanda | Tajikistan | |

ABOUT GPV/KCV

Grandparents Victoria and Kinship Carers Victoria are, in effect, one agency with two distinct strands of work. GPV/KCV represents both the views of grandparents in general and kinship carers in particular. On matters related to the wellbeing of children and families, the views of both agencies are tightly aligned, with all grandparents expecting all sectors of the community to play a role in protecting children.

GPV/KCV believes that each citizen has a responsibility to be a protector of children's rights, particularly those outlined in the UN Convention on the Rights of the Child.

GPV/KCV believes that society must be responsive to family needs and aspirations, ensuring that:

- families are better able to empower families to proceed to future pathways in their lives
- programs are more transparent and better able to protect the rights of families

