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**Comparative Perspectives on Child Protection Legislation: Evaluating International Norms, Practices, and Divergences**

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***Abstract***

*This paper examines the evolution and implementation of child protection legislation across different jurisdictions, analyzing how international norms have influenced domestic legal frameworks while highlighting persistent divergences in approach and practice. Through comparative analysis of legal systems in developed and developing nations, this study evaluates the effectiveness of various child protection models and identifies key challenges in harmonizing international standards with local contexts. The research demonstrates that while the United Nations Convention on the Rights of the Child has established foundational principles, significant variations exist in implementation, enforcement mechanisms, and cultural adaptations of child protection laws.*

**Keywords:** *Child protection, comparative law, international norms, human rights, legal frameworks*

## Introduction:

Child protection legislation represents one of the most complex and culturally sensitive areas of international law, requiring delicate balance between universal human rights principles and respect for diverse cultural, social, and legal traditions. The emergence of international standards, particularly through the United Nations Convention on the Rights of the Child (UNCRC), has created a framework for global child protection, yet implementation varies significantly across jurisdictions.

The significance of comparative analysis in child protection law extends beyond academic inquiry, offering practical insights for policy makers, legal practitioners, and international organizations seeking to enhance child welfare systems globally. This paper examines how different legal systems have interpreted and implemented international child protection norms, identifying patterns of convergence and persistent areas of divergence.

The research methodology employed in this study combines doctrinal legal analysis with comparative case studies from selected jurisdictions representing different legal families and developmental contexts. Primary sources include legislation, judicial decisions, and official reports, while secondary sources encompass academic literature and reports from international organizations.<sup>1</sup>

## II. Theoretical Framework and International Foundations

### A. Historical Development of International Child Protection Norms

The modern framework of international child protection law emerged from the recognition that children require special protection due to their vulnerability and developmental needs. The 1924 Geneva Declaration of the Rights of the Child marked the first international attempt to articulate children's rights, followed by the 1959 United Nations Declaration of the Rights of the Child.<sup>2</sup>

The watershed moment came with the adoption of the UNCRC in 1989, which established comprehensive standards for child protection and rights recognition. The Convention's near-universal ratification, with only the United States remaining as a non-party, demonstrates unprecedented international consensus on child protection principles.<sup>3</sup>

<sup>1</sup> Tobin, J. (2019). *The UN Convention on the Rights of the Child: A Commentary*. Oxford University Press, p. 45.

<sup>2</sup> Freeman, M. (2012). "The Future of Children's Rights." *Children & Society*, 14(4), 277-293.

<sup>3</sup> United Nations Treaty Collection. (2024). Status of Treaties: Convention on the Rights of the Child. Available at: <https://treaties.un.org/>

## **B. Core Principles and Standards**

The UNCRC establishes four fundamental principles that underpin all child protection legislation: non-discrimination (Article 2), best interests of the child (Article 3), right to life, survival, and development (Article 6), and respect for the views of the child (Article 12).<sup>4</sup> These principles create a framework within which domestic legislation must operate, though interpretation and implementation remain subject to local variation.

Article 19 specifically addresses child protection from abuse and neglect, requiring states to take "all appropriate legislative, administrative, social and educational measures" to protect children from physical or mental violence, injury, abuse, neglect, or exploitation.<sup>5</sup> This provision forms the foundation for domestic child protection systems worldwide.

## **C. Regional Instruments and Variations**

Regional human rights systems have developed complementary frameworks that reflect specific cultural and legal contexts. The African Charter on the Rights and Welfare of the Child (1990) emphasizes collective responsibility and community involvement in child protection, while the European Convention on Human Rights influences child protection through privacy and family life provisions.<sup>6</sup>

## **III. Comparative Analysis of National Child Protection Systems**

### **A. Common Law Jurisdictions**

#### **1. United Kingdom**

The United Kingdom's child protection system has evolved through significant legislative reforms, with the Children Act 1989 establishing the foundational framework emphasizing the paramouncy principle—that the child's welfare is the court's paramount consideration.<sup>7</sup> The system combines statutory intervention powers with emphasis on family support and partnership working.

Recent developments include the Children and Social Work Act 2017, which strengthened corporate

<sup>4</sup> UN Convention on the Rights of the Child, adopted 20 November 1989, entered into force 2 September 1990, 1577 UNTS 3.

<sup>5</sup> Ibid., Article 19(1).

<sup>6</sup> African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990).

<sup>7</sup> Children Act 1989 (UK), c. 41, s. 1(1).

parenting duties and introduced new safeguarding partnerships<sup>8</sup>. The UK system demonstrates a shift toward early intervention and prevention while maintaining robust statutory powers for child protection.

## 2. United States

The United States presents a complex federal system where child protection primarily falls under state jurisdiction, creating significant variation in approaches and standards. The Child Abuse Prevention and Treatment Act (CAPTA) provides federal guidance and funding, while individual states maintain distinct child protection systems.<sup>9</sup>

The Adoption and Safe Families Act 1997 emphasized permanency planning and expedited decision-making, reflecting a more interventionist approach compared to some international counterparts.<sup>10</sup> However, the federal structure creates challenges in ensuring consistent protection standards across jurisdictions.

## 3. Australia

Australia's federal system similarly divides child protection responsibilities between Commonwealth and state/territory governments. The National Framework for Protecting Australia's Children 2009-2020 attempted to coordinate approaches across jurisdictions while respecting state autonomy.<sup>11</sup>

Australian child protection systems have increasingly emphasized Aboriginal and Torres Strait Islander self-determination in child protection matters, recognizing historical injustices and the importance of cultural connections in child welfare decisions.<sup>12</sup>

## B. Civil Law Jurisdictions

### 1. France

The French child protection system, governed primarily by the Code de l'action sociale et des familles, emphasizes administrative rather than judicial intervention in the first instance. The Aide Sociale à l'Enfance (ASE) system provides comprehensive support services with judicial intervention reserved for

<sup>8</sup> Children and Social Work Act 2017 (UK), c. 16.

<sup>9</sup> Child Abuse Prevention and Treatment Act, 42 U.S.C. § 5101 et seq.

<sup>10</sup> Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115.

<sup>11</sup> Council of Australian Governments. (2009). National Framework for Protecting Australia's Children 2009-2020. Commonwealth of Australia.

<sup>12</sup> Aboriginal and Torres Strait Islander Child Placement Principle, implemented across Australian jurisdictions.

more serious cases.<sup>13</sup>

Recent reforms through the Law of 14 March 2016 modernized the system by strengthening children's participation rights and improving coordination between different agencies involved in child protection.<sup>14</sup>

## 2. Germany

Germany's child protection system, reformed significantly through the Federal Child Protection Act 2012, emphasizes early intervention and support for families. The concept of Kindeswohl (child welfare) guides decision-making, with strong emphasis on maintaining family unity where possible.<sup>15</sup>

The German system's strength lies in its comprehensive network of support services and its emphasis on professional qualifications for child protection workers, though critics argue it can be overly bureaucratic.<sup>16</sup>

## C. Developing Country Perspectives

### 1. South Africa

South Africa's Children's Act 38 of 2005 represents a comprehensive attempt to align domestic law with international standards while addressing specific local challenges including HIV/AIDS, poverty, and historical inequalities.<sup>17</sup> The Act establishes children's courts and introduces innovative concepts such as child and youth care centers.

Implementation challenges include resource constraints, capacity limitations, and the need to address deeply rooted social problems affecting children's welfare.<sup>18</sup>

### 2. India

India's child protection framework includes the Juvenile Justice (Care and Protection of Children) Act

<sup>13</sup> Code de l'action sociale et des familles (France), Articles L221-1 to L221-9.

<sup>14</sup> Loi n° 2016-297 du 14 mars 2016 relative à la protection de l'enfant.

<sup>15</sup> Bundeskinderschutzgesetz (Federal Child Protection Act) 2012, BGBI. I S. 2975.

<sup>16</sup> Biesel, K., & Urban-Stahl, U. (2018). "Child Protection in Germany: A System in Transition." *European Journal of Social Work*, 21(3), 336-349.

<sup>17</sup> Children's Act 38 of 2005 (South Africa).

<sup>18</sup> Jamieson, L., & Berry, L. (2012). "Children's Act Guide for Child and Youth Care Workers." Children's Institute, University of Cape Town.

2015 and various other laws addressing specific aspects of child protection. The system attempts to balance traditional family structures with modern child protection requirements.<sup>19</sup>

Recent initiatives include the establishment of District Child Protection Units and the CHILDLINE service, demonstrating efforts to strengthen institutional capacity for child protection.<sup>20</sup>

IV. Comparative Analysis Through Tables

Table 1: Comparison of Key Legislative Frameworks

Jurisdiction	Primary Legislation	Year Enacted/Last Major Reform	Key Features & Principles	Alignment with UNCRC	Enforcement Mechanisms
United Kingdom	Children Act 1989 Children and Social Work Act 2017	1989/2017	Paramountcy principle (child welfare paramount); Family support emphasis; Local authority duties; Court orders system; Corporate parenting	Strong Alignment	Family courts; Local Safeguarding Children Boards; Ofsted inspections; Children's Commissioner
United States	Child Abuse Prevention and Treatment Act (CAPTA) Adoption and Safe Families Act	1974/1997	Federal guidance framework; State implementation flexibility; Permanency planning; Expedited timelines; Family preservation	Partial Alignment	State child protection services; Family courts; Federal oversight; Child advocacy centers

<sup>19</sup> Juvenile Justice (Care and Protection of Children) Act 2015, No. 2 of 2016.  
<sup>20</sup> Ministry of Women and Child Development, Government of India. (2019). Annual Report 2018-19

Jurisdiction	Primary Legislation	Year Enacted/Last Major Reform	Key Features & Principles	Alignment with UNCRC	Enforcement Mechanisms
			vs. child safety balance		
France	Code de l'action sociale et des familles Law of 14 March 2016	Various/2016	Administrative intervention priority; Aide Sociale à l'Enfance (ASE); Comprehensive support services; Judicial intervention as last resort; Child participation rights	Strong Alignment	Administrative authorities; Children's judges; Departmental councils; Child protection services
Germany	Bundeskinderschutzgesetz (Federal Child Protection Act) Social Code Book VIII	2012/Ongoing	Early intervention focus; Family preservation (Kindeswohl); Professional qualification requirements; Network cooperation; Prevention emphasis	Strong Alignment	Youth welfare offices; Family courts; Professional standards; Multi-agency cooperation

Jurisdiction	Primary Legislation	Year Enacted/Last Major Reform	Key Features & Principles	Alignment with UNCRC	Enforcement Mechanisms
South Africa	Children's Act 38 of 2005 Child Justice Act 75 of 2008	2005/2008	Rights-based approach; Children's courts; Child and youth care centers; HIV/AIDS considerations; Cultural sensitivity provisions	Strong Alignment	Children's courts; Social development departments; Child protection organizations Provincial oversight
India	Juvenile Justice (Care and Protection) Act 2015 Protection of Children from Sexual Offences Act 2012	2015/2012	Traditional-modern balance; Institutional care framework; District Child Protection Units; CHILDLINE services; Family-based rehabilitation focus	Moderate Alignment	Juvenile Justice Boards; Child Welfare Committees; District collectors; Police specialized units

Note: Alignment ratings based on incorporation of UNCRC principles, implementation mechanisms, and adherence to international standards.



**Table 2: Child Protection System Characteristics by Legal Tradition**

<b>Primary Approach</b>	Court-centered decision making; Adversarial proceedings; Judicial oversight; Legal representation emphasis	Administrative investigation; Inquisitorial approach; Professional assessment priority; Judicial review as secondary	Hybrid court-administrative systems; Resource-constrained implementation; Traditional authority consideration	Collaborative approach; Consensus-building; Minimal court intervention; Social pedagogy emphasis
<b>Family Preservation Philosophy</b>	Moderate emphasis with safety priority; Reasonable efforts requirement; Time-limited reunification services	Strong family preservation; Comprehensive family support; Long-term intervention willingness	Variable emphasis based on resources; Extended family consideration; Community involvement	Very strong preservation focus; Universal family support; Prevention-oriented services
<b>Early Intervention &amp; Prevention</b>	Increasing focus but historically reactive; Targeted intervention programs; Risk assessment tools	Well-established prevention systems; Universal access to family services; Integrated social services	Limited prevention resources; Community-based traditional mechanisms; NGO service delivery	Comprehensive prevention; Universal child and family services; High public investment

<b>Professional Standards</b>	High qualification requirements; Specialized training programs; Professional liability systems	Very high standards; Extensive education requirements; Continuous professional development	Developing standards; Capacity building needs; Mixed qualification levels	Excellent professional standards; University-level education; Regular supervision
<b>Community Involvement</b>	Limited but increasing; Volunteer programs; Community advisory roles	Moderate involvement; Professional service delivery priority; Structured community partnerships	Traditionally high community role; Extended family responsibility; Religious organization involvement	Balanced professional-community approach; Local democratic involvement; Volunteer integration
<b>Cultural Sensitivity Mechanisms</b>	Developing awareness; Indigenous rights recognition; Cultural competency training	Moderate consideration; Immigrant integration focus; Professional cultural training	Critical importance; Traditional law integration; Customary practice accommodation	Strong multicultural policies; Sami rights recognition; Immigrant family support

Note: Characteristics represent general trends within legal traditions, with significant variation possible within individual jurisdictions.

## V. Key Areas of Convergence and Divergence

### A. Areas of Convergence

Several trends indicate convergence in child protection approaches globally. First, there is widespread acceptance of the best interests principle as the primary consideration in child protection decisions, though interpretation varies.<sup>21</sup> Second, most jurisdictions have moved toward more participatory approaches that recognize children's rights to be heard in proceedings affecting them.

Third, there is increasing recognition of the importance of early intervention and prevention, with many countries developing comprehensive family support services alongside traditional child protection responses.<sup>22</sup> Fourth, professional standards for child protection workers are improving globally, with enhanced training requirements and qualification standards.

## **B. Persistent Areas of Divergence**

Despite convergence trends, significant divergences remain. Cultural concepts of childhood and family structure continue to influence child protection approaches, particularly regarding issues such as physical discipline, child labor, and early marriage.<sup>23</sup>

Institutional versus family-based care preferences vary significantly, with some jurisdictions maintaining large institutional care systems while others have moved toward family-based alternatives. Economic factors also create substantial divergences, with resource-constrained systems unable to implement comprehensive protection frameworks.<sup>24</sup>

Legal tradition influences continue to shape procedural aspects of child protection, with common law systems favoring adversarial approaches while civil law systems emphasize administrative and investigative procedures.<sup>25</sup>

## **VI. Effectiveness and Impact Assessment**

### **A. Measuring Success in Child Protection**

Evaluating the effectiveness of different child protection systems presents significant challenges due to

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<sup>21</sup> Alston, P., & Gilmour-Walsh, B. (1996). *The Best Interests of the Child: Towards a Synthesis of Children's Rights and Cultural Values*. UNICEF.

<sup>22</sup> Gilbert, N., Parton, N., & Skivenes, M. (2011). *Child Protection Systems: International Trends and Orientations*. Oxford University Press.

<sup>23</sup> Levesque, R. J. R. (2001). *Culture and Family Violence: Fostering Change Through Human Rights Law*. American Psychological Association.

<sup>24</sup> UNICEF. (2019). *Child Protection Strategy*. New York: UNICEF.

<sup>25</sup> Hetherington, R., et al. (1997). *Protecting Children: Messages from Europe*. Russell House Publishing.

varying definitions of success, data collection methods, and cultural contexts. Traditional metrics focus on reducing child maltreatment rates, improving permanency outcomes, and enhancing child well-being indicators.<sup>26</sup>

Recent approaches emphasize outcome-based evaluation, considering long-term impacts on children's development, educational achievement, and mental health. However, the lack of standardized international metrics makes comparative assessment difficult.<sup>27</sup>

## **B. Lessons from High-Performing Systems**

Jurisdictions with effective child protection systems share several characteristics: adequate resource allocation, strong professional standards, effective inter-agency coordination, and robust legal frameworks. Countries such as Finland and Norway demonstrate how comprehensive welfare states can support effective child protection through universal services and targeted interventions.<sup>28</sup>

These systems emphasize prevention and early intervention while maintaining capacity for statutory intervention when necessary. They also demonstrate the importance of political commitment and sustained investment in child protection infrastructure.<sup>29</sup>

## **C. Addressing System Failures**

High-profile child protection failures have led to significant reforms in many jurisdictions. The Victoria Climbié case in the United Kingdom led to the Children Act 2004 and the establishment of safeguarding boards.<sup>30</sup> Similarly, the Laming Report highlighted systemic failures and recommended comprehensive reforms.

These cases demonstrate the importance of learning from failures and adapting systems to address identified weaknesses. They also highlight the tension between supporting families and protecting children, requiring careful balance in policy development.<sup>31</sup>

<sup>26</sup> Wulczyn, F., et al. (2010). *Adapting a Systems Approach to Child Protection: Key Concepts and Considerations*. UNICEF.

<sup>27</sup> Trocmé, N., et al. (2011). "International Comparisons of Reported Child Maltreatment Rates." *Child Abuse & Neglect*, 35(12), 1006-1019.

<sup>28</sup> Pösö, T., et al. (2014). "Child Protection in Europe: Development of Knowledge, Policies and Practices." *European Journal of Social Work*, 17(3), 326-340.

<sup>29</sup> Burns, K., et al. (2017). "What Children Want: Aggregate Findings from an Ongoing Comparative Study of Children and Young People's Experiences of Child Welfare Systems." *Children and Youth Services Review*, 72, 82-91.

<sup>30</sup> Laming, H. (2003). *The Victoria Climbié Inquiry Report*. Cm 5730. London: The Stationery Office.

<sup>31</sup> Munro, E. (2011). *The Munro Review of Child Protection: Final Report*. London: Department for Education.

## **VII. Emerging Challenges and Future Directions**

### **A. Technology and Digital Protection**

The digital age presents new challenges for child protection systems, including online abuse, cyberbullying, and digital exploitation. Different jurisdictions are developing varied approaches to online child protection, from regulatory frameworks to technological solutions.<sup>32</sup>

The challenge lies in balancing child protection with privacy rights and freedom of expression, particularly as technology evolves rapidly and crosses jurisdictional boundaries. International cooperation becomes essential in addressing digital threats to children.<sup>33</sup>

### **B. Migration and Cross-Border Issues**

Increasing global migration creates challenges for child protection systems, particularly regarding unaccompanied minors, child trafficking, and cross-border custody disputes. The 1996 Hague Convention on International Child Abduction provides some framework, but gaps remain in protection for migrant children.<sup>34</sup>

Climate change and conflict are likely to increase displacement, requiring enhanced international cooperation in child protection. The Global Compact on Refugees includes specific provisions for child protection, indicating growing recognition of these challenges.<sup>35</sup>

### **C. Cultural Sensitivity and Decolonization**

There is growing recognition of the need to decolonize child protection systems, particularly in jurisdictions with significant indigenous populations. This involves recognizing indigenous concepts of child welfare and family structure while maintaining protection standards.<sup>36</sup>

The challenge lies in developing culturally appropriate protection systems that respect traditional practices while ensuring children's safety and well-being. This requires meaningful engagement with

<sup>32</sup> Council of Europe. (2018). Committee of Ministers Recommendation on Human Rights and Business. CM/Rec(2016)3.

<sup>33</sup> UNICEF. (2020). Digital Age Assurance: What Do Children and Young People Think? New York: UNICEF.

<sup>34</sup> Hague Convention on the Civil Aspects of International Child Abduction, opened for signature 25 October 1980, 1343 UNTS 98.

<sup>35</sup> UN General Assembly. (2018). Global Compact on Refugees. A/73/12 (Part II).

<sup>36</sup> Blackstock, C. (2011). "The Canadian Human Rights Tribunal on First Nations Child Welfare: Why if Canada Wins, Equality and Justice Lose." *Children and Youth Services Review*, 33(1), 187-194.

indigenous communities and recognition of historical injustices.<sup>37</sup>

## **VIII. Recommendations for Reform and Harmonization**

### **A. Strengthening International Cooperation**

Enhanced international cooperation is essential for addressing cross-border child protection issues and sharing best practices. This could include developing standardized data collection methods, establishing international training programs, and creating mechanisms for rapid information sharing in child protection cases.<sup>38</sup>

Regional organizations could play enhanced roles in coordinating child protection approaches and providing technical assistance to developing systems. The European Union's efforts in harmonizing child protection standards provide a model for other regions.<sup>39</sup>

### **B. Addressing Resource Constraints**

Sustainable financing mechanisms are crucial for effective child protection systems, particularly in developing countries. This could include international development aid specifically targeted at child protection infrastructure, debt relief programs, and innovative financing mechanisms.<sup>40</sup>

Investment in professional development and training is essential for building effective child protection systems. International organizations could develop standardized training programs and qualification frameworks that can be adapted to local contexts.<sup>41</sup>

### **C. Balancing Universal Standards with Local Adaptation**

Future developments in child protection law must balance universal human rights standards with respect for cultural diversity and local contexts. This requires developing flexible frameworks that can accommodate different approaches while maintaining core protection principles.<sup>42</sup>

<sup>37</sup> Libesman, T. (2014). "Decolonising Indigenous Child Welfare: Comparative Perspectives." Routledge.

<sup>38</sup> UNICEF. (2021). Child Protection in Humanitarian Action: 2021 Core Commitments for Children. New York: UNICEF.

<sup>39</sup> European Commission. (2021). EU Strategy on the Rights of the Child. Brussels: European Commission.

<sup>40</sup> World Bank. (2020). Investing in Human Capital: A Strategy for Building Universal Health Coverage. Washington, DC: World Bank.

<sup>41</sup> International Federation of Social Workers. (2019). Global Standards for Social Work Practice. IFSW.

<sup>42</sup> Reynaert, D., et al. (2012). "Introduction: A Critical Approach to Children's Rights." In Children's Rights: A Critical Approach. Palgrave Macmillan.

Participatory approaches involving local communities, children, and families in developing protection systems are essential for ensuring legitimacy and effectiveness. This includes recognizing the expertise of those with lived experience of child protection systems.<sup>43</sup>

## IX. Conclusion

This comparative analysis reveals both the progress made in harmonizing child protection legislation internationally and the persistent challenges that remain. While the UNCRC has provided a foundational framework that has influenced domestic legislation globally, implementation varies significantly based on legal traditions, cultural contexts, resource availability, and political commitment.

The evidence suggests that effective child protection systems require more than good legislation—they need adequate resources, trained professionals, effective coordination mechanisms, and strong political support. The most successful systems combine robust legal frameworks with comprehensive service delivery and strong prevention focus.

Looking forward, child protection systems must adapt to emerging challenges including digitalization, climate change, and increasing migration while addressing historical inequities and cultural insensitivity. This requires continued international cooperation, sustained investment, and recognition that child protection is not just a legal obligation but a moral imperative that requires collective action.

The comparative perspective reveals that there is no single model for effective child protection, but rather a set of principles and approaches that can be adapted to different contexts. The challenge for the future lies in maintaining universal standards while respecting diversity, ensuring that all children, regardless of where they are born, have access to effective protection from harm.

The journey toward effective global child protection continues, requiring sustained commitment from governments, international organizations, civil society, and communities worldwide. The stakes could not be higher—the safety, well-being, and future of the world's children depend on our collective efforts to build and maintain effective protection systems.

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<sup>43</sup> Thomas, N. (2012). "Love, Rights and Solidarity: Studying Children's Participation Using Honneth's Theory of Recognition." *Childhood*, 19(4), 453-466.



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- <sup>4</sup> UN Convention on the Rights of the Child, adopted 20 November 1989, entered into force 2 September 1990, 1577 UNTS 3.
- <sup>5</sup> Ibid., Article 19(1).
- <sup>6</sup> African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49 (1990).
- <sup>7</sup> Children Act 1989 (UK), c. 41, s. 1(1).
- <sup>8</sup> Children and Social Work Act 2017 (UK), c. 16.
- <sup>9</sup> Child Abuse Prevention and Treatment Act, 42 U.S.C. § 5101 et seq.
- <sup>10</sup> Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115.
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<sup>17</sup> Children's Act 38 of 2005 (South Africa).

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<sup>19</sup> Juvenile Justice (Care and Protection of Children) Act 2015, No. 2 of 2016.

<sup>20</sup> Ministry of Women and Child Development, Government of India. (2019). *Annual Report 2018-19*.

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<sup>30</sup> Laming, H. (2003). *The Victoria Climbié Inquiry Report*. Cm 5730. London: The Stationery Office.

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