

## The Convention on the Rights of the Child (CRC)

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On November 20 1989, the Convention on the Rights of the Child (CRC) was adopted unanimously by the General Assembly of the United Nations. With 193 ratifications to date, CRC is one of the very little international human rights treaties that enjoys almost universal ratification. CRC provides a legal framework that sets the highest level of international standards and guidelines for regional and national implementation. It also covers the full family of human rights: economic, social, cultural, and civil and political rights, as well as special protection measures.<sup>1</sup>

The Convention has two optional protocols that provide specific protections for children: (1) the Optional Protocol on the Involvement of Children in Armed Conflict; and (2) the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. Though both Optional Protocols operate under CRC, they are independent multilateral agreements under international law. The Optional Protocol on Children in Armed Conflict limits the recruitment of children under the age of 18 for armed conflict and requires parties to provide children who have participated in armed conflict with appropriate physical and psychological rehabilitation. It entered into force on February 12, 2002, and has been ratified by 142 countries. The Optional Protocol on the Sale of Children requires parties to criminalize child pornography and prostitution, close establishments that practice such activities, and seize any proceeds. It entered into force on January 18, 2002, and has been ratified by 145 countries.<sup>2</sup>

### **Declarations and reservations by EGYPT made upon ratification, accession or succession of the CRC**

Reservation made upon signature and confirmed upon ratification: Since The Islamic Shariah is one of the fundamental sources of legislation in Egyptian positive law and because the Shariah, in enjoining the provision of every means of protection and care

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<sup>1</sup> 18 Candles, The Convention on the Rights of the Child Reached Majority, Institut international des droits de l'enfant (IDE), page 11.

<sup>2</sup> <http://www.fas.org/sgp/crs/misc/R40484.pdf>, accessed 23-11-2011, 11:10 am

for children by numerous ways and means, does not include among those ways and means the system of adoption existing in certain other bodies of positive law,  
The Government of the Arab Republic of Egypt expresses its reservation with respect to all the clauses and provisions relating to adoption in the said Convention, and in particular with respect to the provisions governing adoption in articles 20 and 21 of the Convention.

Notification of withdrawal: On 31 July 2003, the Government of Egypt informed the Secretary-General that it had decided to withdraw its reservation made upon signature and confirmed upon ratification in respect of articles 20 and 21 of the Convention. The reservation read as follows:

Since The Islamic Shariah is one of the fundamental sources of legislation in Egyptian positive law and because the Shariah, in enjoining the provision of every means of protection and care for children by numerous ways and means, does not include among those ways and means the system of adoption existing in certain other bodies of positive law,

The Government of the Arab Republic of Egypt expresses its reservation with respect to all the clauses and provisions relating to adoption in the said Convention, and in particular with respect to the provisions governing adoption in articles 20 and 21 of the Convention.<sup>3</sup>

### **The Role of the Family**

The preamble to the CRC expresses a conviction behind the CRC that the family is “the fundamental group of society and the natural environment for the growth and well-being” of children and that the family should be given the necessary protection and assistance. A leading principle for the implementation of the CRC according to the preamble is that “the child, for the full and harmonious development of his or her personality, should grow up in a family environment.” The emphasis on the family is further seen in the recognition of the role of the extended family, family reunification, and the right of a child deprived of his or her liberty to maintain contact with his or her family.

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<sup>3</sup><http://sim.law.uu.nl/SIM/Library/RATIF.nsf/be2c697381d495be41256bfb003493b1/da069c067e8fb3c0c12568b7004480b5?OpenDocument>.

In short, the CRC recognizes the child as a rights-holder but at the same time fully respects the responsibility of parents for the child's upbringing and development. The CRC underscores that it is fundamental for the child's harmonious and full development to grow up in his or her (extended) family or, in case this is not possible, in an alternative family setting.<sup>4</sup>

One of the characteristics that distinguish the CRC from other core human rights treaties is the recognition of the role of parents in the discussion, guidance and direction they have to provide to the child in the exercise of her/his rights. It is part of the recognition of the primary and common responsibility of parents for upbringing their child in which the best interests of their child will be their basic concern (art. 18). In that regard we need to focus on para. 2 of this article because it usually does not get the attention it deserves: *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.*

Parents also have the primary responsibility to secure, within their abilities and financial capacities, the condition of living necessary for the child's full and harmonious development. Again the State is under the obligation to assist parents in the performance of this responsibility and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing (art. 27). These provisions clearly put the parents in the frontline of the promotion and implementation of the rights of their child and establish the triangle relationship between the child, the parents and the State which is another characteristic of the CRC. The provisions of the CRC on the parents' rights and duties indicate on one hand that much of the child-rearing is left to the decision of the parents. But at the same time this decision is limited by the obligation of parents to act in **the best interest of their child** and to take into account the views of the child and her/his evolving capacities when providing guidance and direction to the child in the exercise of her/his rights. In the

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<sup>4</sup> What does the Children's convention require? Jaap E. Doek, Emory International Law Review, <http://www.law.emory.edu/fileadmin/journals/eilr/20/20.1/Doek.pdf>, pages 203-204

process of raising their children parents have to respect and fully comply with the rights of the child as enshrined in the CRC. This implies among others that parents are not allowed to use cruel, inhuman or humiliating treatment or punishment, including corporal punishment, with their children. The CRC Committee has consistently recommended States Parties to take the necessary legislative measures for the prohibition of corporal punishment and other forms of physical and mental violence in all settings such institutions, schools and at home. Why the CRC requires such prohibition and how it can be effectively implemented has been elaborated by the CRC Committee in its General Comment No. 8 (2006) on The Right of the Child to Protection from Corporal Punishment and other cruel or degrading forms of punishment.

Much more priority should be given to specific investments in terms of budget allocations for the establishment of support services for parents, such as parenthood training, home visitation programmes, counselling and where appropriate, cash transfer programmes to tackle poverty. This kind of investments should be an essential part of every national plan of action for the implementation of the CRC. It goes without saying that parents should be involved in the development and implementation of such programmes and that NGO's and UN agencies, in particular UNICEF, should play an important role in this regard as well.<sup>5</sup>

### **International Cooperation**

Quite a number of articles of the CRC relate to international cooperation, i.e. articles 4, 7 (2), 11 (2), 17 (b), 21 (e), 22 (2), 23 (4), 24 (4), 27 (4), 28 (3), 34, 35 and 45. The Optional Protocol to the CRC on the sale of children, child prostitution and child pornography (OP-SC) refers in its article 10 to international cooperation, inter alia 'in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism' (Art. 10(3) OP-SC).

In accordance with art. 10 (4) OP-SC, States parties in a position to do so are to provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

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<sup>5</sup> Children's Rights and the Convention, Jaap E Doek, pages 10-11

The Optional Protocol to the CRC on the Involvement of Children in Armed Conflict (OP-AC) contains one reference to international cooperation and one to technical cooperation and financial assistance. In its preamble, the need 'to strengthen international cooperation in the implementation of the (...) Protocol, as well as the physical and psychosocial rehabilitation and social reintegration of children who are victims of armed conflict' is highlighted. Implementation of the OP-AC is to occur 'including through technical cooperation and financial assistance' (Article 7 OP-AC). States parties in a position to do so are to provide such assistance through existing multilateral, regional, bilateral or other programmes or through a voluntary fund.

References to international cooperation and to the particular needs of developing countries gradually trickled into the text of the CRC: first with regard to general measures of implementation, subsequently in the provisions on the disabled child and on the rights to health and education, and finally in the preamble. The reference to international cooperation was never the subject of huge controversy as a matter of principle. Nor have declarations or reservations been made on international cooperation. This offers additional evidence that the references to international cooperation were not objected to by any of the States parties. Moreover, the repeated references to 'international cooperation' and 'the needs of developing countries' in a significant number of provisions testify to the uncontested nature.

The absence of objection in principle to inclusion of references to international cooperation in the text of the CRC does not mean in itself that a *general and undifferentiated* legal obligation to cooperate internationally for development (in particular with regard to children) can be read into the CRC. Rather, a literal reading of the text of article 4 learns that all States parties undertake to take all kinds of measures, and with regard to economic, social and cultural rights, where needed, within the framework of international cooperation. Taking into account the needs of developing countries, States also undertake to promote 'in the spirit of international cooperation' the exchange of information in the field of preventive health care and treatment of disabled children, and to promote and encourage international cooperation in relation to the rights to health and education. While the final aim in the field of health is to achieve progressively the full realization of the right to the highest attainable standard of health, it is less couched in human rights language in the field of education, where

the objective of international cooperation is to contribute to the elimination of illiteracy and to facilitate access to scientific and technical knowledge and modern teaching methods. On the other hand, the travaux préparatoires contain strong indications of the fact that States considered their *specific* undertakings to promote and encourage international cooperation for development with regard to the exchange of information on preventive health care and treatment of disabled children, the right to the highest attainable standard of health and the right to education, to be *binding* obligations.

No specific group(s) of duty-bearers is identified in the CRC with regard to international cooperation for development. The operationalization of the extraterritorial obligations seems to be entrusted primarily to the United Nations, i.e. UNICEF, the specialised agencies and other UN organs (see article 45 CRC). In the OP-SC, the duty-bearers are more clearly identified.

The OP-SC clearly testifies to the recognition of a shared responsibility for development, in that the strengthening of international cooperation for addressing the root causes of the exploitation of children (i.e. poverty and underdevelopment) is to be promoted. Although a strongly worded obligation is conspicuous by its absence ('to promote the strengthening'), the fact that Northern States eventually accepted this obligation to be included, and in the operative part of the Protocol, is highly significant. Moreover, the specific obligation incumbent on States 'in a position to do so', aiming obviously mainly at Northern States, is to 'provide financial, technical and other assistance through existing multilateral, regional, bilateral or other programmes.' A reference to international cooperation in the OP-AC has been included in the preamble only. In addition, an article was inserted on technical cooperation and financial assistance. States 'in a position to do so' rather loosely commit themselves to financial assistance for the implementation of the Protocol. This differentiation of responsibility and the concomitant identification of duty bearers for obligations of international cooperation for development are highly important and relevant. Regrettably, these provisions are so vaguely worded that it is difficult to deduce any specific legal obligation therefrom.

### **Interpretation by the CRC Committee**

The CRC Committee's starting point, as clarified in its general comment on general measures of implementation<sup>6</sup>, is that there is a shared responsibility for the

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<sup>6</sup> To see the document kindly visit: [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/CRC.GC.2003.5.En](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/CRC.GC.2003.5.En)

implementation of the CRC: it is a cooperative exercise for all States. This shared responsibility is based on the articles 55 and 56 UN Charter, and on political commitments at global meetings to international development cooperation and the elimination of poverty.

The CRC Committee has also shed some light on the *division* of responsibility. Developing States are actively to seek international cooperation if their own resources are insufficient. In the Committee's concluding observations, they have been urged quite consistently to look for international cooperation and assistance, in relation both to economic, social and cultural rights (which article 4 CRC is limited to) and to a lesser extent also to civil and political rights.

Developing countries have been called upon also to consider their obligations under the Convention in all aspects of their negotiations with international financial institutions and other donors or when concluding free trade agreements, to ensure that the economic, social and cultural rights of children, particularly children belonging to the most vulnerable groups, are well observed. It seems only fair to impose such obligations on developing States if there is a legitimate expectation both on behalf of the Committee and of developing countries that calls for international cooperation and assistance will be received and reacted upon positively.

However, no *general and undifferentiated* legal obligation to cooperate internationally for development (in particular with regard to children) can be deduced from the text of the CRC. The shared responsibility for development pertains mainly to the exchange of information on preventive health care and treatment of disabled children, the right to the highest attainable standard of health, and the right to education, and is phrased in rather weak terms. The CRC Committee has further clarified the scope of extraterritorial obligations under the CRC by identifying specific obligations for donor countries in relation to development cooperation, such as allocating 0.7 per cent of GDP to development assistance and mainstreaming a child rights perspective in all development programs and projects. Quite remarkably, the CRC Committee has mainly focused on an extraterritorial obligation to *fulfil-provide*, which is because of its direct link with the transfer of resources from North to South politically the most sensitive and disputed one. The practice of the ICESCR Committee indicates that a much broader range of extraterritorial obligations could be pointed out to States parties. In light of the

negotiations on the Disability Convention it can be concluded that the extraterritorial State obligation to respect now goes by and large unchallenged.

While the extraterritorial obligations to respect and to protect do not require a transfer of resources from North to South, they may make an important contribution to the availability of resources in the South, e.g. by excluding detrimental trade or agricultural policies.

### **Recommendations**

1. More attention should be paid to extraterritorial obligations, which can make an important contribution to the resources available for the realisation of the economic, social and cultural rights of children.
2. Extraterritorial obligations to respect and to protect are as important as the extraterritorial obligation to fulfill, given their potential impact on the availability of resources.
3. The binding obligation to spend 0.7 % of GDP on development assistance should be further explored and better abided by, in light of the numerous political commitments made over the past decades.<sup>7</sup>

### **The CRC Debate Universalism vs. Cultural Relativism**

The debate between universal and culturally relative implementations of child rights is significant to implement the best methods of program planning for children. Hence, this discussion should not be disconnected from children's daily realities. The local/global power structure influences their access to social, economic, and political resources. Advocates for a rights-based approach do not take into account the children who have limited economic, political, and economic resources to realize the vision engrained in the CRC. Those that adhere to the polarizing discussion of universal and cultural relativist frameworks for child rights do not consider the limitations and constraints that these lenses contain for effectively implementing the CRC. This is particularly the case for children in disadvantaged situations or areas of. Human rights advocates

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<sup>7</sup>Is There a Legal Obligation to Cooperate Internationally for Development?. This submission is based on the article, 'Economic, Social and Cultural Rights in the CRC: Is There a Legal Obligation to Cooperate Internationally for Development?', to be published in *The International Journal of Children's Rights*, Prof. Dr. Wouter Vandenhoele, 2007, <http://www.crin.org/docs/Vandenhoele%20International%20Cooperation.pdf>

utilizing a rights-based approach and humanitarian organizations are not prepared to navigate through the realities and resources available for children. Rights advocates often take into account either the global or local influence on children immersed in child soldiering, labor, or trafficking, rather than seeing the interplay and power relations within these situations.

It is argued that the children's rights discourse should focus not on the framing of rights from either universal or cultural perspectives, but on the consistency in supporting all children's wellbeing. For example, the global community had condemned Palestinian children's political activism but ignored the daily Israeli violation of children's rights. For most disadvantaged children's the issue is inconsistency of rights. It is not the value of culture over universal rights. However, to achieve consistency it should be perceived as network of rights. Traditionally, humanitarians and child rights proponents also ignore the network of rights that are employed in children's lives. This network consists of community, family, and individual rights that are negotiated at different times and in varying contexts during conflict and war situations. If one is violated the other one is in jeopardy.

### **The Case of the African Child**

The discussions about children's rights in the global West/North were mainly in the context of legal protection of children executed by the UNCRC. However, many in the global South had different perspectives on the convention. In African contexts, for example, children's rights were not widely defined by legislation or international conventions until the adoption of the Declaration on the Rights and Welfare of the African Child by the Assembly of Heads of State of the Organization of African Unity in Liberia in 1979 (Declaration on the Rights and Welfare of the African Child). This was a significant change that provided a legal consideration and the rights of children of the African continent.

Subsequently, building upon the Declaration on the Rights and Welfare of the African Child, the African Charter on the Rights and Welfare of the Child (1990) reaffirmed a range of specific rights for children on the continent. The preamble of the Charter (1990, p. 1) states:

Noting with concern that the situation of most African children remains critical due to the critical factors of their socio-economic, cultural, traditional and developmental circumstances,

natural disasters, armed conflicts, exploitation and hunger, and on account of the child's physical and mental immaturity he/she needs special safe guard and care.

The articles of the African Charter on the Rights and Welfare of the Child covered similar areas to the UNCRC with an additional emphasis on child welfare and cultural issues.

Many have argued that the cultural practices in the global South, particularly in Africa, are distinctly different from those of the West in regards to children's relationship with parents and other adults, as well as within the community and among elders. Ng'Asike and Odongo (2009) argue that the CRC as a broad global initiative can easily miss thorny issues affecting children in Africa, especially as related to poverty, HIV/AIDS, harmful cultural practices, the role of the family, authoritarian African governments and traditional governance issues. They further argue that African communities' ways of interacting with children and their rights are not clearly stipulated or reflected in the UNCRC.

This pertinent point was brought up by heads of many African states in 1979, who questioned the missing components in the UNCRC that could bring relevancy to African cultural contexts (Murray, 2004). Therefore, the adoption of the ACRWC was a critical attempt to connect to the African concept of children's rights to larger cultural emphases within African contexts. The Children's Charter, for example, takes into consideration the virtues of the African cultural heritage, historical background and the values of the African civilization which should inspire and characterize the concept of the rights and welfare of the African child.

African human rights systems are often more concerned with the welfare of children, versus their rights. ACRWC targets critical gaps missed by UNCRC, especially as relates to socio-cultural and economic realities of the African experience. A critical analysis of the articles in ACRWC indicates that the charter has captured certain aspects of children considered by the framers to be of particular importance to Africa. Examples include, Article 17 on the administration of Juvenile Justice, article 21 on protection against Harmful Social and Cultural Practices, article 26 on protection against apartheid and discrimination, article 30 on the children of imprisoned mothers and article 31 on responsibility of the child. The strategic inclusion of these articles in ACRWC clearly shows African people are aware of their strengths and weaknesses

which they would like to address and consequently targeting these issues in ACRWC. This is demonstrating honesty and humility in as far as the African children's Rights are concerned.

Another critical contribution of the Charter on the Rights and Welfare of the Child is its concern with traditional or customary law and extended family practices, including guaranteeing the rights of the child within the extended family and community contexts. For example, if a child loses both parents, some African customary laws allow members of the extended family to adopt the child as their own. The African Charter, while upholding all the universal standards outlined in the UNCRC, —speaks to specific problems that confront the African child; for example, the impact of armed conflicts, harmful traditional practices. Since the Charter was also aimed at mitigating the effects of poverty and economic hardships that are associated with poor health care, lack of shelter, and schooling, it addressed many impediments towards realizing children's rights in African nations. The stipulations of the African Charter have been incorporated into statutes and even constitutions of various African countries. Sloth-Nielsen (2008) says that in other cases there has been cross-continental collaboration in legal reform addressing children's issues. Such statutes, while often still concerned with customary law, are premised on the rights of the child, instead of the power of parents.

To conclude, these strategies are essential for working from a child rights based foundation in cultural contexts that may not share Western values:

1. Know where you are and bring respect, listening and hearing local perspectives
2. Notice who is not at the table and who is engaged and be as inclusive as possible
3. Make necessary accommodations, taking into account place and material conditions
4. Avoid assumption of universalization of representation Engage meaningfully with allies of young children and respect their families and community leaders.<sup>8</sup>

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<sup>8</sup> Children's rights in Cultural contexts January 2011, Una Working Paper 8, Prepared by the Una Children's Rights Learning Group, pages 10-11-16

### **Children involved in armed conflict**

Article 38 of the Convention prohibits the recruitment of children under the age of 15 into the armed forces, and obliges States to protect and care for children affected by armed conflict. Children who are victims of armed conflict also have a right to physical, psychological and social assistance under article 39 of the CRC. Moreover, an Optional Protocol to the Convention obliges States to abstain from compulsory recruitment of any persons under age 18; to establish a minimum age for voluntary recruitment higher than 15 years of age, and to prevent the participation of persons under age 18 in armed conflict. Many African countries have experienced armed conflict in recent years. Nevertheless, the adoption of legislation concerning children and armed conflict has received relatively little attention since 1990. The Constitution of South Africa prohibits the use of children under age 18 in armed conflict and recognizes the right of children to protection in times of armed conflict. Rwanda has adopted legislation raising the minimum age for recruitment from 16 to 18. The Nigerian Child Rights Act prohibits the recruitment into the armed forces of any person under age 18, and imposes on all public authorities and institutions an obligation to prevent the direct participation of children in any hostilities.

In Asia, the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act adopted by the Philippines is a rare example of a law concerning children that addresses the rights of children affected by armed conflict. The Act provides that children shall be given priority during evacuation; that measures shall be taken to ensure that evacuated children are accompanied by persons responsible for their safety and wellbeing; that expectant and nursing mothers and children in camps for the displaced shall be given additional food; and that the camps shall provide children with opportunities for physical exercise, sports and games. It also stipulates that any person under age 18 arrested for reasons relating to an armed conflict is entitled to special protection, including immediate free legal assistance and release pending trial. If a court finds that the child has committed the acts for which he or she

is being charged, proceedings shall be suspended and the child placed in the custody of the Department of Social Welfare and Development until age 18.

The Indonesian Law on Child Protection contains an article that, in addition to recognizing the right to children to protection against war and armed conflict, also recognizes the right to protection against “misuse for political activities” and “involvement in social unrest.” Another provision prohibits recruiting or equipping children for military or similar purposes.’ Violation of these provisions is punishable by a sentence of five years’ imprisonment, and the right of child victims of armed conflict or social disturbances to various forms of assistance is recognized.

347 In Sri Lanka, the National Child Protection Authority of 1999 has a mandate to monitor the situation of children affected by armed conflict and make recommendations concerning the protection of such children, including steps to promote their mental and physical well-being and their reintegration into society.

Despite the number of Latin American countries that have experienced armed conflict in recent decades, only a few of the children’s codes adopted since 1990 contain provisions on the rights of children and armed conflict. The Nicaraguan code contains a reference to the duty of the government to pay “special attention” to children caught up in armed conflict, including refugee children. The Guatemalan code reaffirms the obligation to respect the provisions of international humanitarian law, and to prevent the direct participation of any person under the age of 18 in an armed conflict. The Ecuadorian code also prohibits the recruitment and participation in armed conflict of any person under age 18, and provides that children have a right to priority in assistance provided in times of emergency, including armed conflict, and the right to assistance in social reintegration. In Colombia, a special law adopted in 1999 raised the minimum age for recruitment to 18 years. Some countries in Central and Eastern Europe have raised the minimum age for recruitment since becoming States parties to the Convention. The Belarusian Law on the Rights of the Child establishes 18 as the minimum age for this purpose. The Czech Republic adopted legislation in 1999 that prohibits compulsory recruitment of persons under age 18. Some new legislation also addresses other aspects of this issue. The Belarusian law mentioned above prohibits directing propaganda for war to children. The new Romanian law on the rights of the child provides that, in the event of an armed conflict, infrastructure used for the

protection of children shall not be used for military purposes, and children shall be given priority in any evacuation.

Although armed conflict has been almost non-existent in western Europe since 1990, many European and other countries have participated in armed conflict elsewhere, either as a part of international peacekeeping operations or as part of multilateral military actions such as those in Afghanistan, Iraq and Kosovo. Little new legislation concerning children has been reported, however.<sup>9</sup>

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**Course: Child Rights in Law**

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<sup>9</sup> Law Reform and Implementation of the Convention on the Rights of the Child, Children involved in armed conflict, pages 91-93