

play RIGHTS

Special Issue

GENERAL COMMENT on article 31

*of the Convention on
the Rights of the Child*

GENERAL COMMENT SUMMARY

Wales –
a country serious
about play

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WHERE THE
U.S. STANDS
ON CHILDREN'S
RIGHTS

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THE ELEPHANT IN THE PLAYROOM

The U.S. Government's Role in Advancing Children's Rights

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When I travel overseas for work or research on children's rights, I am always asked why the United States has not ratified the U.N. Convention on the Rights of the Child (CRC). It is a question probably every American child advocate hears when traveling abroad. After all, 193 countries have ratified the CRC, making it the most widely accepted human rights treaty in history. Only the United States, Somalia, and now newly independent South Sudan are not a party to this historic treaty that enshrines children's civil, political, economic, social, and cultural rights. Why won't the United States support the most important instrument for advancing children's rights? How can the United States ask other countries to do more to fulfill the CRC's mandate when it will not participate at all? The United States' lack of participation is the proverbial elephant in the room, and no discussion of children's rights ends before someone asks why the United States remains on the sidelines.

That the U.S. stance on the CRC puzzles many child advocates and parents is understandable. The CRC has fostered positive changes in law, policies and attitudes towards children in many countries, indicating the value of the CRC framework. Moreover, U.S. law and the CRC are largely compatible, reflecting the fact that many of the rights contained in the CRC (including freedom of religion and freedom of expression) were included as a result of U.S. proposals. Indeed the U.S. government was arguably the most active delegation during the

drafting phase, submitting proposals and textual recommendations on 38 of 40 substantive CRC provisions.

Yet despite the similarities between the CRC and U.S. law and policy and despite the positive impact of the CRC in other countries, the U.S. government has made no progress toward ratification since signing the treaty in 1995. (Signature indicates support for a treaty and means the country agrees not to act in a way that would defeat the object and purpose of the treaty, but does not make the treaty legally binding on the country; ratification creates a legally binding effect.) The CRC has been swept up in a much broader political and cultural battle in the United States, frustrating efforts to ensure the rights and well-being of children in the United States and around the globe.

This article aims to step back from the current contentious political divide in the United States and reflect on the importance of the CRC and the value of U.S. participation, both for children in the United States and for children in other countries.

PROGRESS ON CHILDREN’S RIGHTS

In the 24 years since the adoption of the CRC, the international community has made important progress on improving the lives and well-being of children. Numerous countries that have ratified the treaty have strengthened laws related to children’s health and education rights, their right to live free from abusive labor practices and other forms of exploitation, the administration of juvenile justice, and many other issues affecting children. Dozens of countries have incorporated provisions of the CRC directly into their national law, and in a number of countries, children’s rights have been enshrined in new constitutions.¹

Progress has not been limited to law and policy initiatives. The world has become a better place for millions of children. The number of children who die before their fifth birthday has dropped from 12.5 million in 1990 (the year the CRC entered into force) to 6.9 million in 2011, according to the World Health Organization.² As a result, every year approximately 5.5 million children are able to realize their most precious right – their right to life – when previously their lives and contributions to their families and communities would have been lost. Significant progress has also been made in education. According to UNESCO, the number of primary school age children out of school declined from 103 million in 1999 to 67 million in 2009, and the

percentage of primary school age children who are not in school has dropped from 16% to 10%.³ In these and other respects, life has improved for many children and their families.

THE CRC FRAMEWORK

The achievements of the past two decades also highlight how much work remains. Tens of millions of children still experience violations of their rights on a regular basis. Many have not reaped the benefits of recent progress. Similar to civil rights legislation in the United States and other countries, the CRC has spurred progress; however, work remains to be done in order to fully realize every child's rights. Moving forward, the CRC itself provides a reminder of what is most important.

First, the CRC framework is built upon four foundational principles that reinforce what must be the central guiding principles in law, policy, and programs affecting children:

- Every child is entitled to special assistance, as needed, to ensure her survival and to give her the opportunity to develop to her fullest potential;⁴
- Every child has the same rights, and no child should be discriminated against or denied his or her rights;⁵
- In all policies and programs concerning children, the best interests of the child must be a primary consideration;⁶ and
- Children's views have value, and children should be afforded an opportunity to participate in decisions that affect their lives, in a manner consistent with their age and maturity.⁷

These core principles establish a framework for treating children with dignity and ensuring their rights and well-being. As Nelson Mandela, former president of South Africa, has stated, "There can be no keener revelation of a society's soul than the way in which it treats its children."⁸ The CRC's core principles provide the basis for achieving a society that honors children.

Second, the comprehensive nature of the CRC provides another important reminder. Children's issues are not limited to the narrow set of issues typically associated with childhood.

Children are growing, developing actors in their families and communities, and as they develop, they confront a broad range of challenges. The CRC recognizes the full range of rights held by each child. In doing so, it reinforces the holistic nature of human rights. Rights are interrelated and interdependent. Freedom from maltreatment and exploitation is essential to child well-being. Health status and health rights must be protected to ensure a child is able to realize his or her education rights. Education rights, in turn, position a child to better secure his or her rights as an adult. In other words, rights are of limited utility if some are ensured and others are not. All rights are important to providing children the opportunity to develop to their fullest potential.

SPOTLIGHT ON PLAY

This theme issue of *PlayRights Magazine* highlights the value of the CRC with special attention to the right to play, a right found in article 31 of the treaty. Though children's experts such as UNICEF explain that '[t]here is no such thing as a "small" right and no hierarchy of human rights,'⁹ the right to play has often been relegated to the margins. To some extent, this is understandable. Though all rights are important, certain rights are essential to mere survival. If the right to survival is not protected, then other rights become superfluous.

That said, the dismissal of article 31 of the CRC and the child's right to play ignores three important points. First, article 31 does not speak only to the right to play. It encompasses that and much more. Article 31 reads:

'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.'

Play, rest, leisure, and participation in family and community cultural life are all connected and must be recognized.

Second, this provision has its roots in the Universal Declaration on Human Rights (UDHR), adopted in 1948. Article 24 of the UDHR provides: “Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.” Contrary to the assertion that this is a “new” right without precedent and only for children, it has its origins in the foundational document of the modern human rights movement, a document that was forged under the leadership of Eleanor Roosevelt.

In other words, a similar concept was recognized more than 60 years ago for all human beings. Though the drafters of the UDHR and the early international human rights instruments tended to have adults in mind, children are people too. The UDHR applies to children fundamentally because human rights do not depend on governments granting rights; individuals have rights because they are human beings.

Finally, inclusion of the right to play itself in the CRC reflects an even more significant point—this right is needed for the healthy development of the child. As Dr. Kenneth Ginsburg reports:

‘Play allows children to use their creativity while developing their imagination, dexterity, and physical, cognitive, and emotional strength. Play is important to healthy brain development. It is through play that children at a very early age engage and interact in the world around them. ... Undirected play allows children to learn how to work in groups, to share, to negotiate, to resolve conflicts, and to learn self-advocacy skills.... Play is integral to the academic environment.... It has been shown to help children adjust to the school setting and even to enhance children’s learning readiness, learning behaviors, and problem-solving skills.’¹⁰

In short, play contributes in a multitude of ways to the healthy development of the child and can improve a child’s capacity to realize his or her right to education as well.

Evidence of the importance of play and the rights to rest, leisure and play, in turn, reinforce a central idea in the CRC: that a comprehensive framework addressing all rights of the child is vital to ensuring all children have the opportunity to realize their fullest potential.

THE U.S. GOVERNMENT'S ROLE

As the sole superpower today, the United States has both the power and resources to dramatically improve the lives and well-being of children around the globe and within its own borders. U.S. ratification of the CRC is a vital step in the process and would serve these dual purposes.

First, U.S. ratification of the CRC would reestablish U.S. global leadership on children's issues. The United States has demonstrated its capacity to lead at many points in the past. For example, it was a pioneer in the use of the "best interests of the child" standard—a foundational principle of the CRC that has been used in U.S. law for over 100 years. In addition, the United States was also first to develop juvenile courts. Only more recently has the United States been on the sidelines. Ratification of the CRC would enable the United States to regain its position as a global leader on children's rights and well-being. Active U.S. participation in the CRC would embolden the Committee on the Rights of the Child and enable it to press other countries to improve their treatment of children. U.S. ratification of the CRC would enable the international community to leverage the powerful influence of the U.S. government to further efforts to ensure child well-being.

Second, U.S. ratification of the CRC is important for children in the United States. The CRC provides a template for addressing the rights and needs of children, and today many children in the United States are in need. Millions of children are not assured of the opportunity to reach their fullest potential.

On issues such as health status, education, and child labor, the United States has room for improvement. For example, the United States performs more poorly than many other industrialized nations with respect to health indicators such as infant mortality, life expectancy, and premature and preventable deaths. It now ranks 41st among countries in under-five infant and child mortality.¹¹ Millions of poor children still have no regular source of health care. Educational data reveal similar dismal news. The 2011 National Assessment of Education Progress Reading Test found that 24 percent of eighth graders in the United States scored below "basic level" for reading proficiency and only 34 percent of eighth graders read at or above grade level.¹² In the 2009 Program for International Assessment, 15-year-old students in the United States continued to trail many of their peers in other Organization for Economic Cooperation and

Development (OECD) countries in their average science and math proficiencies. In mathematics, only five of the 33 OECD countries had lower average scores than U.S. teenagers, and in science, only nine OECD countries had lower average scores.¹³ Finally, tens of thousands of children in the United States suffer workplace injuries each year,¹⁴ and many others experience various forms of exploitation. In short, there are many opportunities in the United States to improve the well-being of children. The CRC provides a template for a comprehensive approach to child well-being.

WHERE WE STAND

Given the United States signed the CRC approximately 17 years ago, it is fair to ask why there has not been any progress since then. The reasons for lack of progress toward U.S. ratification of the CRC are both historical and political.

Historically, the United States has had a unique approach to and relationship with international human rights treaties. Dating back to Eleanor Roosevelt's leadership in the development of the Universal Declaration of Human Rights, the foundational document of the modern human rights movement, the United States has a strong track record of participation in the development of human rights treaties and declarations. As noted above, the United States was arguably the most active delegation during the drafting of the CRC, putting forth proposals and textual recommendations on almost every substantive provision of the treaty.

However, when it comes to participating in treaties once they are adopted, the U.S. position has been very different, and the U.S. government has moved much more cautiously in that regard. Indeed, the United States took forty years to ratify the Convention on the Prevention and Punishment of the Crime of Genocide, arguably the least controversial human rights treaty in history. Based on specious arguments that human rights treaties are a threat to U.S. sovereignty, from 2001-2009 the George W. Bush Administration made clear that it would not support ratification of any human rights treaty and had an antagonistic view toward the CRC, even though the treaty was drafted during the Administrations of Ronald Reagan and George H.W. Bush. The younger President Bush's view on the CRC led the U.S. government to oppose the annual Resolution on the Rights of the Child in the U.N. General Assembly several years in a

row, culminating in 2008, when the U.S. was the only no vote in a 180 to 1 vote in support of measures to advance children's rights and well-being.

More recently, under the Obama Administration, U.S. government officials have asserted at times that U.S. ratification proceeds slowly because the United States takes its international obligations seriously and thus wants to ensure full compliance before ratification. Although compliance before ratification has been the U.S. position in theory, as a practical matter the U.S. government has not made any meaningful efforts since the adoption of the CRC in 1989 to review its practices and move towards full compliance. Moreover, as economic, social and cultural rights operate on the principle of progressive realization, absolute fulfillment of all rights in the CRC is not a prerequisite for ratification.

WHAT WE CAN EXPECT

In the United States, after the President signs a human rights treaty, the next step is that the Department of State conducts an internal review of the treaty. During this review, it is common for the State Department to develop a set of reservations, understandings, and declarations that it recommends be submitted at the time of ratification. Following that review, the President would then send the treaty to the Senate for its advice and consent. Two-thirds of the Senate (67 members) would need to vote in favor of the treaty for the United States to ratify.

Currently, the CRC lies in the hands of the Obama Administration. It must conduct its internal review and send the treaty to the Senate.

A small but vocal conservative opposition has urged the Obama Administration not to send the treaty to the Senate, suggesting that it would be dead on arrival. Caving to these threats would ignore the significant majority who support the idea of children's rights. For example, surveys show that 72 percent of Americans believe strongly that health care should be a right, and 82 percent believe strongly that equal access to quality public education is a right.¹⁵ Eighty-one percent of Americans believe lack of quality education for children in poor communities is an education rights violation.¹⁶ Opinions on these issues and others show significant support for children's rights and human rights in general in the United States.

So where do we go from here? I am both an optimist and a realist. I believe that eventually the U.S. government will join the rest of the world in ratifying the CRC, enabling the CRC to become the first human rights treaty to achieve universal acceptance.

I am also a realist and recognize that much work remains and that U.S. ratification, when it occurs, will be accompanied by important reservations, understandings, and declarations, that both clarify the U.S. interpretation of the treaty and limit its domestic impact. Most notably, it will be accompanied by two understandings and declarations that are typically part of any U.S. ratification package. First, the U.S. will pronounce the treaty to be non-self-executing. This will mean that it does not have domestic legal effect until Congress or state legislatures adopt implementing legislation. Second, it will include a federalism understanding that will affirm the U.S. system of federalism and make clear that the federal government will not interfere with issues reserved to the states. No doubt there will also be other reservations, understandings, and declarations on specific provisions, but nothing in the CRC should prevent U.S. participation altogether.

Indeed that is why treaties allow for reservations, understandings, and declarations, so that countries with different systems of government and different beliefs can tailor their obligations in a way that preserves their sovereignty while advancing human rights.

If and when the CRC is declared non-self-executing, it will limit the direct domestic impact of the CRC. However, the CRC will still be a template for evaluating child well-being and can be used as a framework for designing, implementing, and evaluating child-friendly policies and programs. It can serve all of those purposes with respect to the rights to rest, leisure, and play and provide an important reminder that these rights are also vital to the healthy development of every child.

CONCLUSION

In 1959, President Eisenhower remarked in an interview, “I think that people want peace so much that one of these days governments had better get out of the way and let them have it.”¹⁷ Likewise parents around the globe want what is best for their children and want to see their children develop to their fullest potential. The mandate enshrined in the Convention on the

Rights of the Child is aimed at ensuring children's rights and well-being and enabling every child to develop to his or her fullest potential. U.S. government support of the CRC would help children both in the United States and around the globe. It is time for the U.S. government to recall the wisdom of President Eisenhower and stop hindering progress on children's rights. Better yet, the U.S. government should ratify the CRC and put its full weight behind a global effort to secure every child's rights and well-being.

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4 Convention on the Rights of the Child (CRC) article 6 reads: 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.

5 CRC Article 2 reads in part: "States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status."

6 CRC Article 3 reads, in part: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."

7 CRC. Article 12 reads in part: "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."

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