

Chapter 7

The UN Convention on the Rights of the Child: An Instrument for Creating a Healthy Environment for the Child

Jaap E. Doek

Introduction

The United Nations (UN) Convention on the Rights of the Child (CRC) was drafted between 1980 and 1989 in a rather political and complicated process with an open-ended working group of the then UN Commission on Human Rights (Doek, Cantwell, & Detrick, 1992; LeBlanc 1995; Legislative History 2007). The text of the CRC as proposed was unanimously adopted by the General Assembly of the UN on 20 November 1989 (United Nations Convention on the Rights of the Child, 1989). It is the most universally ratified human rights treaty in the history of the UN. By their ratification, 193 states have committed themselves to respect for and a progressive full realization and implementation of the rights of the child as enshrined in the CRC.

Only two states have not ratified the CRC: Somalia, due to the fact that it does not have an internationally recognized government and USA for lack of political will. But USA did ratify the two Optional Protocols to the CRC on the Involvement of Children in Armed Conflict and on the Sale of Children, Child Prostitution, and Child Pornography.¹ There is reason to believe that the new administration will work toward ratification since there are no obstacles that cannot be addressed in reservations if they pose serious legal problems (Todres, Wojcik, & Revaz, 2006).

¹It goes beyond the scope of this article to present the arguments, pros and cons about the ratification of the CRC by USA; see in this regard, e.g., Emory International Law Review, Volume 20, Spring 2006, Number 1 with various contributions to Special Spring 2006 Symposium on; What's wrong with rights for children. But USA did submit its initial reports on the implementation of the Optional Protocols to the CRC (UN Doc. CRC/C.OPAC/USA/1, 22 June 2007 and CRC/C/OPSC/USA/1, 16 July 2007). They were discussed with the UN Committee on the Rights of the Child on May 22, 2008, in Geneva, resulting in Concluding Observations with recommendations for further actions (UN Doc. CRC/OPAC/USA/CO/1, 25 June 2008 and UN Doc. CRC/C/OPSC/USA/CO/1, 25 June 2008).

J.E. Doek (✉)

UN Committee on the Rights of the Child, Amsterdam, The Netherlands
e-mail: JaapEDoek@cs.com

A Committee on the Rights of the Child (hereafter: the CRC Committee) has been established in accordance with art. 43 of the CRC. This committee is a body of 18 experts elected by representatives of the States Parties to the CRC in charge of monitoring the implementation of the CRC by the States Parties (Gras, 2001). This is done on the basis of reports regularly submitted by States to the CRC Committee and of reports submitted by UN agencies and NGOs. In addition, the CRC Committee issues so-called General Comments, documents in which the Committee provides States Parties and all others interested in the CRC with guidance on the interpretation and implementation of the CRC (Belser, Hanson, & Hert, 2009). I will come back to the work of the CRC Committee in the second part of this chapter. But first I shall discuss the importance of the CRC for the creation of a healthy environment for the child.

The CRC and the Right of the Child to a Healthy Environment

The CRC is not only the most ratified but also the most comprehensive human rights treaty. It covers and elaborates not only the civil and political rights of the child, but also her/his economic, social, and cultural rights. The CRC is often and in the first place associated with the protection of the child. And indeed, the CRC contains quite a number of provisions requiring States Parties to take effective legislative, social, and other measures to protect the child against all forms of physical and mental violence while in the care of parents or other caregivers (art. 19); against all forms of commercial and/or sexual abuse and exploitation, trafficking, sale, and other forms of exploitation (art. 32–36); against torture, and inhuman and degrading treatment (art. 37); and the recruitment and use in armed conflict (art. 38 and the Optional Protocol on the involvement of children in armed conflict).

These provisions are important for the creation of a healthy environment, given the fact that they also call for prevention. But the CRC presents the child not only as an object of protection, a traditional approach in other human rights treaties; see for instance art. 24 ICCPR: “Every child shall have . . . the right to such protection measures as are required by his status as a minor, on the part of his family, society, and the State,” and a similar provision in art. 10(3) ICECSR.²

The key importance of the CRC is the recognition of the child as a subject of rights, rights holder with evolving capacities to exercise her/his rights. A recognition reflected, e.g., art. 12 requires States Parties to assure to the child the right to express her/his views in all matters affecting the child, and that these views are given due weight in accordance with her/his age and maturity (see for detailed interpretation of this key provision United Nations General Comment No. 12 (2009)).

²I will limit myself to the role of parents, but it should be noted that art. 5 also mentions “the members of the extended family or community as provided for by local customs, legal guardians or other persons legally responsible for the child”; in other words, guidance and directions to the child in her/his exercise of rights could and should also be provided by others

The CRC does not only see the child as recipient of protection, but also as an active participant not only in judicial and administrative proceedings (see art. 12(2) and art. 9(2) CRC), but also in all matters affecting the child. Another and equally important characteristic of the CRC is that the child is not left to his evolving capacities as a rights holder. The child is seen as member of her/his family and it is fundamental for the full harmonious development of her or his personality that the child grows up in a family environment (Preamble, par. 6 CRC). In this regard, it should be noted that the school also plays an important role because art. 29 CRC requires that the education of the child shall be directed to, among others, the development of the child's personality, talents, and mental and physical abilities to their full potential; see for more information United Nations General Comment No. 1 (2001). Within this family environment, the parents have the primary and common responsibility for the upbringing and development of the child as explicitly recognized in art. 18 CRC. The best interests of the child shall be the basic concern of parents. This responsibility encompasses, according to the CRC, the rights and duties of parents to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the CRC (art. 5); and the responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the development of the child (art. 27(2)CRC).

But this recognition of the rights and duties of parents does not mean that they are the only ones responsible for the creation of a healthy environment for their child.

Both articles 18 and 27 of CRC explicitly provide for responsibilities of the State in general and in rather specific terms. Art. 18(2) contains a provision that can be considered as a key element of the State's responsibility, and is often not given the attention it deserves:

States Parties shall render appropriate assistance to the parents in the performance of their child-rearing responsibility and not only for e.g. parents who are in need of assistance because of their shortcomings or difficulties but for all parents and with a very specific and important goal: to promote and guarantee (the implementation of) the rights enshrined in the CRC.

In addition to this support and in order to actually provide it, the State shall ensure the development of institutions, facilities, and services for the care of children. Article 27 containing the right of the child to an adequate standard of living expects States Parties to take appropriate measures (in accordance with national conditions and within their means) to assist parents to implement this right which shall include to provide, in case of need, material assistance and support programs particularly with regard to nutrition, clothing, and housing.

Of course, States Parties do have many more obligations under the CRC. For instance, the obligation to ensure – when appropriate in a progressive manner – the respect for and implementation of the child's right to, e.g., freedom of expression and freedom of association, the right to the highest attainable standard of health and to education. These and other obligations of the State have to be translated into measures that should contribute to the creation of a healthy environment for the child, while the State should fully respect and take into account the responsibilities of the parent(s) and the child as a rights holder with evolving capacities to exercise

her/his right. One could say that the implementation of children's rights takes place in a triangle of the child, the parent, and the State.

What do all these rather abstract provisions mean in more concrete terms? The CRC Committee has elaborated these (and other) provisions of the CRC in very concrete recommendations in its General Comments. By way of example I will focus on Early Childhood and on Adolescents, topics which also have been addressed in United Nations General Comment No. 7 (2006) and United Nations General Comment No. 4 (2003) respectively.

Early Childhood

The CRC Committee emphasizes that article 12 applies also to the (very) young children. Research and observations show that these children are acutely sensitive to their surroundings, acquire understanding of the people, places, and routines in their lives very rapidly, make choices and communicate their feelings and ideas and wishes long before they are able to communicate through the conventions of spoken and written language. Therefore, States Parties should take all appropriate measures to ensure that the concept of the child as a rights holder with freedom to express views and the right to be consulted is implemented from the earliest stage in ways appropriate to the child's capacities, best interests, and rights to protection from harmful experiences. In this regard, the State should promote active involvement of parents in the creation of opportunities for young children to exercise their rights progressively within their every day activity in all relevant settings (United Nations General Comment No. 7, 2006, par. 14).

Assistance to Parents

The CRC Committee acknowledges that the realization of children's rights during early childhood (a period of most extensive and intensive parental responsibility related to all children's rights covered by the CRC) to a large degree depends on the well-being and resources available to parents. Therefore, the Committee recommends States Parties to develop an integrated policy that would include assistance and, where necessary, interventions that impact indirectly on parent's ability to promote the best interests of the child (e.g., taxation and benefits, adequate housing, and working hours) as well as those that have more immediate consequences (e.g., prenatal health services, home visitors, and parent education and counseling; United Nations General Comment No. 7 (2006), par. 20). In that regard, special attention must be paid to the most vulnerable groups of young children, e.g., girls, children living in poverty, children with disabilities, orphans, children infected with/affected by HIV/AIDS, and children belonging to minorities.

Parent–Child-State

The CRC Committee has repeatedly underscored the importance of early childhood education (an importance confirmed by research). In the light of responsibility of the parent, the right of the child to a full and harmonious development, and the obligation of the State, the Committee makes, e.g., the following recommendations (United Nations General Comment No. 7 (2006), par. 29):

States Parties in providing the assistance to parents as required in art. 18(2) should take all appropriate measures to enhance parent's understanding of their role in their children's early education, encourage child-rearing practices which are child-centred, encourage respect for the child's dignity and provide opportunities for developing understanding, self-esteem and self-confidence;

States Parties should at all time aim to provide programmes (for early childhood development) that complement the parents' role and are developed as much as possible in partnership with parents (...) in developing the child's personality, talents and mental and physical abilities to their fullest potential.

Adolescents

After a brief description of adolescence as a period characterized among others by rapid physical, cognitive, and social changes, including sexual and reproductive maturation with various challenges in the transition to adulthood, the CRC Committee expresses (United Nations General Comment No. 4, 2003) its concern that States in implementing their obligations under the CRC have not given sufficient attention to the specific concerns and needs of adolescents as rights holders.

In United Nations General Comment No. 4 (2003), the Committee pays particular attention to the creation of a safe and supportive environment for adolescents. It emphasizes the role of parents, public authorities, and others working with or for children to create, with a view to provide adolescents with a meaningful opportunity to express their views freely in all matters affecting them (art. 12 CRC), an environment based on trust, information-sharing, the capacity to listen, and sound guidance that is conducive for the equal participation of adolescents including in decision-making processes (United Nations General Comment No. 4 (2003), par. 4).

In terms of parental assistance, the CRC Committee provides States Parties with various recommendations, e.g., to provide adequate information and support to parents to facilitate the development of a relationship of trust and confidence, in which issues regarding, for example, sexuality and sexual behavior, and risky lifestyles can be openly discussed, and acceptable solutions can be found that respect the adolescent's rights and their evolving capacities to exercise them (United Nations General Comment No. 4 (2003), par. 12); and to give special attention, guidance, and support to adolescents and parents whose traditions and norms may differ from those in the society where they live.

The creation of a safe and healthy environment requires that States Parties do take effective measures, including the establishment of counseling and support services (United Nations General Comment No. 4 (2003), par. 18):

To prevent and address problems relatively common among adolescents such as mental disorders, psychosocial illness (e.g. eating disorders, self-destructive behaviour, depression) and suicide, but also various forms of violence in and outside schools and in institutions;

To prevent and eliminate harmful traditional practices that threaten the healthy development and life of adolescents such as early marriage, female genital mutilation and honour killings.

With a view to the adolescents' evolving capacities to exercise their rights, the Committee is of the opinion that States should ensure that all adolescents are provided with and have access to adequate information essential for their health and development and for their ability to participate meaningfully in society. In that regard (and with reference to art. 3, 17 and 24 CRC), adolescents should be provided with access to sexual and reproductive health information, including on family planning and contraceptives, the dangers of early pregnancies, the prevention of HIV/AIDS, and the prevention and treatment of sexually transmitted infections (STI; United Nations General Comment No. 4 (2003), par. 28).

Finally, States Parties should in this regard

Enact laws or regulations to ensure that confidential advice concerning treatment is provided to adolescents so that they can give their informed consent. Such laws or regulations should stipulate an age for this process, or refer to the evolving capacities of the child;

To provide training for health personnel on the rights of adolescents to privacy and confidentiality, to be informed about planned treatment (United Nations General Comment No. 4 (2003), par. 33).

After this (incomplete) picture of the interpretation of provisions of the CRC, which can provide the child with a healthy environment, the key question remains: Are they implemented and how?

The Implementation of the CRC

In a report of the UN Secretary General presented to the General Assembly of the UN in 2007 (UN Doc. A/62/259, 15 August 2007), one can find a global picture of progress made in the realization of the rights of the child and more specifically in the light of the International Plan of Action "A World Fit for Children" adopted at a Special Session of the General Assembly of the UN in May 2002 (UN Doc. A/S-27/19 Rev. 1.). This report focuses almost exclusively on developments in the areas of health, education, violence, and HIV/AIDS.

Progress has been, e.g., in reduction of infant mortality and increase of immunization (measles death reduced with 60%), but routine immunization still

fails to reach 27 million children. Substantial progress has been made in providing iodized salt to households but each year, 38 million newborns in the developing world are unprotected from lifelong consequences of brain damage associated with iodine deficiency. But adolescent health remains a challenge in several respects and the report does not provide any information on progress made in this regard. More and other information are provided with the same mixed picture of (some) progress and remaining challenges (Doek, 2007b) in education, in the prevention of violence against children, and exploitation of children (Pinheiro, 2006). But I like to focus on the instruments and processes for an effective implementation of the CRC at the national level, with attention for the monitoring role of the CRC Committee.

Implementation of the CRC at the National Level

By ratifying the CRC, the State – that is, its government – assumed (voluntarily) the legal obligation to undertake all appropriate legislative, administrative, and other measures for the implementation of the rights enshrined in the CRC (art. 4). Given the rich content of the CRC meeting that obligation requires a lot of different actions to be carried out under the responsibility of different ministries or departments.

Given the complexity of the CRC including, e.g., the interdependence of many of the rights it contains, the implementation can easily become fragmented and inconsistent.

With a view to establish a comprehensive policy at the national level, the CRC Committee has recommended the State Parties to undertake General Measures of implementation (see United Nations General Comment No. 5, 2003). This set of General Measures is meant to create an infrastructure for the implementation of the CRC. These measures are legislation, coordination, budget allocation, data collection, ongoing awareness raising actions and training of professionals, active involvement of NGOs, and an independent monitoring body such as a children's ombudsperson. The development and implementation of these measures must be guided by the so-called General Principles of the CRC: non-discrimination (art. 2); best interest of the child (art. 3); the right to life, survival, and development (art. 6); and the right of the child to express views and to participate (art. 12; Doek, 2007a).

To make this rather general approach more concrete and by means of an example: in order to create a healthy environment for the (very) young child, the government has to enact adequate legal provisions and regulation not only for the protection, but also for the healthy development of this child. In addition, various social measures must be taken, e.g., to provide parents with support and counseling where necessary. As I said, the Committee has given detailed recommendations in this regard (GC. No 7, 2005). All these measures do require effective coordination and cooperation between various ministries (Justice, Health, Education, and Social Affairs) and the allocation of sufficient budgets. In order to assess the impact of these measures, collection of relevant data is necessary.

Although it is fair to say that most States Parties to the CRC have taken a variety of measures for its implementation, particularly in the area of legislation, and also in terms of developing specific programs, e.g., on (prevention of) violence against children, sexual exploitation, trafficking, child labor, and juvenile justice, the reality on the ground shows that the implementation of all these measures is often either insufficient or even completely lacking (African Report, 2008).

So the key question is, what can/should be done to actually implement the CRC provisions and create a healthy environment for the child? First, and to avoid misunderstandings, the State is the primarily responsible for taking all necessary actions for the realization of the child's right to a healthy environment. The CRC committee has – as said and illustrated before – provided the States Parties with rather specific guidance and recommendations on the measures they should take. At the same time, it is the role of the parliament to control the government in its performances in the field of children's rights and to put pressure on the government if it fails to meet its obligations under the CRC. But keep in mind that States cannot meet these obligations overnight, and that the role of parliament can be among others to urge the government to develop and implement a national comprehensive plan for a progressive implementation of the CRC (there is a manual for parliamentarians with guidance for their role in implementing the CRC). But experiences have shown that it is not enough to rely on the (political) willingness of a government and/or members of parliament to actually provide/allocate the necessary financial and other resources for the implementation of the CRC.

It is crucial that the civil society is as much as possible involved in the (promotion of the) implementation of the CRC, in particular via NGOs, advocacy groups, and professional organizations. The history so far has shown that there are in almost all States, parties to the CRC NGOs active in the field of children's rights. It can be said that the CRC, compared to other human rights treaties, has – from a global perspective – the largest active constituency. These NGOs have proven that they can, through all kinds of actions, campaigns, and targeted lobbying, contribute in a significant manner to respect for and implementation of the rights of the child at the national level.

The other very important factor in the promotion of children's rights is UNICEF, particularly in over 150 developing countries in which it has country offices. They integrate as much as possible the implementation of the CRC into their country programs and use the specific provisions to support, e.g., programs to prevent and eliminate violence in schools and to provide primary health care with special attention for marginalized and vulnerable groups of children (art. 2 CRC, non-discrimination).

Finally, it is important that every country establishes an independent body for monitoring the implementation of the CRC, such as a children's ombudsperson or commissioner, or a section in an existing National Human Rights Institution. Because such a body can, as experiences have shown, in quite a number of countries, play the role of advocate for and voice of children, and can as a watchdog keep the government on its toes. In some countries, these bodies also have the

power to receive and investigate individual complaints of children, a power which can not only provide the individual child with remedies, but can also contribute to a better understanding of the meaning of the rights of the child in the daily reality (United Nations General Comment No. 2, 2002).

In short, there are different mechanisms available to contribute to the de facto ensuring of respect for and implementation of the rights of the child at the national level. Maximum energy and money should be invested in an effective functioning of these mechanisms.

Monitoring of the Implementation of the CRC at the International Level

The CRC does, like the other human treaties, provide for a mechanism for international monitoring of the States Parties performance in meeting the obligations under the CRC. This international accountability is important not only as an addition to national accountability, but also as a motor for national efforts to improve implementation of the CRC.

The CRC Committee (see intro) has been established for the purpose of examining the progress made by States Parties in achieving the realization of their obligations under the CRC. States are obliged to regularly submit periodic reports to this committee, and other information which form the basis for an examination of the progress made and the remaining challenges in a dialog between the Committee and a delegation of the State Party (art. 42 & 44). The results of this dialog/examination are presented in the so-called Concluding Observations containing concerns and specific recommendations of the CRC Committee to the government of the State concerned. These recommendations should be and in fact are used in many countries as ammunition for NGOs, UN agencies, and others for furthering the implementation of the CRC.

At the international level, the CRC committee does not have the power to investigate individual complaints, a power all other human rights treaty bodies have. Efforts are underway to establish this power, but it may take many years to have concrete results.

But in some regions, there are more (Inter American and European Courts) or less (African Court for Human Rights) effective courts where individual complaints can be filed. They are not especially meant for children, but they pay increasing attention to the rights of children as enshrined in the CRC. Their role in guaranteeing the implementation of children's rights may become more and more important in the years to come.

In conclusion, the CRC contains quite a number of substantive provisions meant to create and support a healthy environment for children, and there is a variety of instruments available at the national and the international level to make sure that these provisions are more than promises on paper.

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