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Children's rights: policy into practice

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Inviting your Critical Engagement

Photos used throughout this publication are sourced from Shutterstock (http://www.shutterstock.com). They have been selected to highlight the diversity of ways in which children and childhood can be represented.

**We encourage you to engage critically with these images as you reflect on the idea that 'childhood' is socially constructed.** Ask yourself, ‘What message about children or childhood is being conveyed through this image’? ‘How do these images challenge my understandings of children and childhood’?
Introduction

This Background Briefing provides a foundation for understanding children’s rights and their implementation.

We will look first at the historical origins of ideas of human rights, and some of the debates that have taken place about their content and extent. We then look specifically at the development of ideas of children’s rights during the twentieth century.

Following this we will review the history of global initiatives to promote human rights, as a prelude to considering in some depth the United Nations Convention on the Rights of the Child (UNCRC), which has underpinned the promotion of children’s rights around the world since 1989.

We will examine the process of drafting the UNCRC, and the content of the final treaty; not just the specific rights which it proclaims for all children, but also the provisions for ratification, implementation and monitoring. We also consider some of the issues around local circumstances and cultural differences, and the relationships between ‘provision, protection and participation’ rights.

Following this we examine the different methods used to make the UNCRC effective in practice. In particular we will discuss the work of the Committee on the Rights of the Child in reviewing progress in member States, and the concept of ‘children’s rights programming’ (CRP) used by NGOs and other bodies to promote children’s rights in a variety of contexts.

Finally, we consider some initiatives which have been taken to ‘mainstream’ children’s rights, in particular the work of independent advocates for children’s rights.

By learning about the theoretical and historical background to ideas of children’s rights, how these ideas have developed in the last century, and some ways in which they are being implemented in contemporary society, I hope this Background Briefing will provide a foundation for you to think critically about the implications of these rights within the context of your own work with children and young people.
Human rights – what are they?

Ideas of human rights are widely considered to have originated in the European enlightenment of the late seventeenth and eighteenth centuries. At that time confidence in divine, papal and royal authority was being challenged.

In relation to the material world, scientists were exploring ‘laws of nature’ through empirical research. In relation to the social world, philosophers such as Hobbes, Locke and Rousseau were seeking an alternative source of regulation to simple reliance on received authority. They sought this partly in nature, and partly in reflection on human interaction.

Ideas of ‘social contract’ and the mutual obligation between society and the individual were based on the conception of an autonomous, rational person who necessarily sacrificed some freedom for mutual benefit, but who had inalienable rights to freedom of person and expression – sometimes referred to as civil rights.

In the nineteenth century the concept of rights expanded to include political rights, in particular the right to vote. In the twentieth century ideas of social rights, such as the right to a home and access to an income, education and health care, became more prominent. Marshall’s (1950) conception of citizenship as developing in three phases (namely civil rights, political rights and social rights) is an expression of this history.

For some philosophers and lawyers these three types of rights are lesser and of questionable standing, compared with fundamental liberty rights. In the case of social rights the connection with ideas of the autonomous, rational person is less clear. Some philosophers have argued that these are rights based on having a need or an interest, rather than the traditional justification based on the expression of ‘will’ (see Campbell, 1992). This is, of course, a significant issue for children, who are often taken to be less competent than adults.

A right is not just any old statement about what is desirable or ought to happen. A statement of right is a claim that demands a response. Another distinctive feature of a right is that it is inalienable. As Eleanor Roosevelt is reported to have said, ‘A right is not something that somebody gives you; it is something that nobody can take away.’

Maurice Cranston (1967) argued that rights have to meet three tests (further explained by Worsfold, 1974). Firstly, they have to be practicable, in the sense of being coherent and consistent within a society’s conception of justice. Secondly, they have to be universal; that is, they may have different practical implications or be exercised differently by different members of society, but no one should be excluded. Finally, they have to be of paramount importance, meaning not only that they should not be about something trivial, but also that they are in some sense overriding. As Ronald Dworkin (1978) expresses it, rights ‘trump’ other considerations.
Human rights – who has them?

When we think about the universal character of rights, the question arises who is a member of the community of rights bearers, and what is the basis for inclusion. Talk of ‘human rights’ implies that humanity is the criterion for membership; but what is it that makes us human? Answers to this question may emphasise rationality and ‘will’, or may emphasise common human needs.

Rights theory was first developed by educated white men (and a few women, such as Mary Wollstonecraft) and, as a consequence, generally reflected their perspective. From this perspective the rational person views the world in a particular way, based on a particular conception of his individual interests.

But does that view include people who are less educated, or people with limited intellectual abilities? Is it possible to have a right that one cannot claim directly for oneself? Does it make sense to talk about individuals having rights which they depend on others to claim for them? What is the relationship between rights and caring relationships? These are all questions that are particularly relevant for children, especially younger children.

Over time the conception of who has rights has expanded to include human beings who were not necessarily foremost in the minds of those early philosophers: women as well as men, people of all races and cultures, adults of limited intellectual abilities, and eventually children.

More recently philosophers such as Peter Singer (1975) have made a powerful case for animals to have rights too – especially the great apes and marine mammals, who are generally regarded as having superior intelligence.

The more that common needs or common interests, rather than ‘will’, are used as a foundation for rights, the more inclusive the concept tends to become. It also becomes broader, in that a range of social rights, or rights to resources, can be founded on common needs.

The libertarian philosopher Robert Nozick (1974) contended that one can only gain rights to resources by the use of one’s labour, transfer (by gift, sale or legacy) or compensation for injury, so that there are no rights to resources that come simply from being a person with needs. In contradiction to this, Colin Wringe (1996, p.21) argues that ‘If we enter the world without obligations to others, there is no reason why we should accept the laws, rights and conventions already existing in the world we enter, unless there is at least some minimal advantage to us in doing so.’

In terms of the social contract, this means that minimal welfare rights are ‘the condition of our obligation to obey the law and respect the rights of others’, and therefore basic welfare rights are ‘entitled to the same urgency of implementation’ as freedom and protection rights.

In similar terms, Doyal and Gough (1991) offer a definition of basic needs in terms of what is essential to the ability to participate in social life. According to this view, basic human needs are for health and autonomy. Individuals have rights to the basic requisites for participation in human social life, and those in a position to make this possible have an obligation to do so.
The development of children’s rights

Children were seldom mentioned in discussions of rights prior to the twentieth century. As indicated already, rights were generally assumed to be an attribute of rational adults. As political rights developed, this assumption was further entrenched in the notion of ‘universal adult suffrage’, which by definition excludes children (however that social category is defined).

When people first began to talk about children’s rights, early in the twentieth century, it was children’s vulnerability, and their developmental needs, that were emphasised rather than their autonomy. Ellen Key (1849-1926), the Swedish social reformer, called for the twentieth century to be ‘The Century of the Child’. Eglantyne Jebb (1876-1928) responded to that call, establishing the Save the Children Fund to organise help for children in Europe suffering from famine and homelessness after the First World War, and then by drafting the Declaration of the Rights of the Child which was adopted by the League of Nations in 1924. In these two innovations can be seen the roots of much of the development of children’s rights policy and programming in the years since, with the emphasis on meeting children’s basic needs so that they are able to develop as valuable members of society, and on calling ‘duty-bearers’ to account for how they fulfil their obligations to children.

Signs of another approach to children’s rights appeared in Poland with the work of Janusz Korczak (1878-1942). Korczak was a paediatrician who established an orphanage for Jewish children in Warsaw. A fervent believer in children’s capacities for taking responsibility, he ran the orphanage as a kind of ‘children’s republic’ with its own parliament, court and newspaper. Korczak carried on with determination during the increasingly difficult years of the Warsaw Ghetto; in the end, refusing offers of safety for himself, he accompanied the children to the death camp at Treblinka.

A new kind of movement for children’s rights emerged at the end of the 1960s, with demands for the liberation of children from adult control. Richard Farson (1974, p.27) argued that ‘The acceptance of the child’s right to self-determination is fundamental to all the rights to which children are entitled’. Children, it was argued, should be free to direct their own lives and their relationships with others.

John Holt (1975, p.15-16) proposed that ‘the rights, privileges, duties, responsibilities of adult citizens be made available to any young person, of whatever age, who wants to make use of them’. This included the right to vote, to be legally responsible for one’s life and acts, to work for money, to direct and manage one’s own education, to travel, to live away from home, and ‘the right to seek and choose guardians other than one’s own
parents’. This argument has been widely opposed and sometimes denigrated. However, even if one does not accept the package as a whole, Holt’s and Farson’s claims represent a challenge to justify the limits that we would impose on children’s rights, and always to make a specific case for not giving children the same rights as adults.

David Archard (2004) distinguishes between ‘liberationist’ and ‘caretaker’ approaches to children’s rights: the former emphasises children’s equality with adults and argues for them to have the same fundamental human rights and freedoms, while the latter stresses their relative dependence, vulnerability and incompetence.

A middle way between these positions holds that rights should reflect children’s developing competence, offering them protection as long as they need it combined with empowerment as soon as they are ready for it, with restrictions on their freedom and autonomy only where these can be justified in terms of maximising their future choices. Joel Feinberg (1980) characterises this as the child’s ‘right to an open future.’ As Michael Freeman (1987, p.310) puts it:

...the question we should ask ourselves is: what sort of action or conduct would we wish, as children, to be shielded against on the assumption that we would want to mature to a rationally autonomous adulthood and be capable of deciding on our own system of ends as free and rational beings?

John Eekelaar’s concept of ‘dynamic self-determinism’ (1994) is another way of expressing this approach to children’s developing capacity for autonomy (see Thomas 2000/2002 for a fuller discussion).

### Human rights as an international project

The establishment of the League of Nations following the Great War of 1914-18 represented one of the earliest attempts at international governance. The main objective of the League was to prevent aggression between nations; an objective in which it signally failed.

Following the Second World War of 1939-45, the United Nations was set up, with what were intended to be much stronger foundations. Ideas of human rights were at the heart of the new organisation. The International Court of Justice was established in 1945, and in December 1948 the General Assembly adopted the Universal Declaration of Human Rights.

Around the same time, in 1949, the Council of Europe was established, which went on to agree on the European Convention on Human Rights and establish the European Court of Human Rights. The gross violations of human rights that had taken place in the War, particularly in Europe but also in Asia, had led to a determination to use international governance to prevent any repeat, and to provide a legal resort for citizens whose national governments did not protect them properly.

The Universal Declaration of Human Rights, together with the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (both
adopted in 1966 and in force from 1976), together form the International Bill of Human Rights.

Australia is a party to these international covenants, and also to a range of others. These included: the Convention on the Prevention and Punishment of the Crime of Genocide; the Convention on the Political Rights of Women; the International Convention on the Elimination of all forms of Racial Discrimination; the Convention on the Elimination of all forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment; the Convention relating to the Status of Stateless Persons; the Convention Relating to the Status of Refugees; the Convention on Slavery; and the Convention on the Rights of Persons with Disabilities.

Some, but not all, of these Conventions have monitoring mechanisms built in, to ensure that States comply with their terms (or at least have to explain themselves if they fail to do so).

All these institutions and conventions formally apply to everyone, but tend to be addressed primarily to adult citizens. There have been relatively few attempts to use them to defend the rights of children and young people.

In 1948 the United Nations also adopted the Declaration of the Rights of the Child. This basically reaffirmed the Geneva Declaration, with two additional clauses reflecting particular concerns that followed the Second World War: ‘the child must be protected beyond and above all considerations of race, nationality or creed’ and ‘the child must be cared for with due respect for the family as an entity.’

A new Declaration of the Rights of the Child, adopted in 1959, was slightly fuller and more specific than the preceding instruments, with an extensive preamble. However, the focus continued to be on children’s developmental needs for health and social care, education and protection from harm.

There was still a gulf between the civil and political rights asserted for adults and the social welfare and protection rights granted to children. There were also no mechanisms for monitoring compliance with any of these Declarations of the Rights of the Child, meaning that they were little more than statements of good intent.
The Convention on the Rights of the Child (UNCRC)

In 1979, the International Year of the Child, the delegation from Poland proposed to the General Assembly of the United Nations that there should be an international treaty to protect children’s human rights.

The Convention that resulted was drafted over a period of ten years, starting from the model originally submitted by Poland, and then involving an open-ended working group of the Commission on Human Rights, in which eighty nations took part at one time or another. Many of the debates were over how to produce a document that would reflect different national realities, cultures and beliefs, and at the same time would have real impact on children’s rights all over the world (see below, page 9).

The result was a very different document from earlier Declarations. While the 1924 Declaration had five Articles, the 1948 Declaration seven and the 1959 Declaration ten, the 1989 Convention has a total of 54 Articles. Of these 40 express substantive rights, and the remainder are concerned with the process of implementation.

The Convention is often divided conceptually into ‘provision, protection and participation’ rights. Participation was a new development not present in the earlier Declarations. Poland’s initial draft had been similar to the 1959 Declaration, with the addition of a brief implementation mechanism. When this was rejected, Poland submitted an expanded version, which included an Article granting to the child ‘who is capable of forming his own views the right to express his opinion in matters concerning his own person’. This was a significant development in the construction of children as rights-bearing individuals, and was developed further in the drafting of the final document.

The first four Articles commit States Parties (nation states which have ratified the treaty) to implement the Convention rights for all children without discrimination, and to make children’s best interests a primary consideration in decision-making. The next seven concern children’s rights to survival, a name and nationality, an identity, and to live or have contact with their own families. Articles 12 to 17 then establish children’s rights to be consulted, to express their views, to have freedom of thought and association, privacy, and access to information. These are the ‘participation’ articles.
The ‘guiding principles’ of the UNCRC

The Committee on the Rights of the Child has identified certain key Articles as ‘general principles’ which underpin the implementation of the Convention and should guide any issues of interpretation. These are:

- The principle of non-discrimination (Article 2);
- The best interests of the child to be a primary consideration in all actions concerning children (Article 3);
- The right to life, survival and development (Article 6); and
- The right to be heard (Article 12).

UNICEF also includes in its ‘guiding principles’ the definition of a child in Article 1 (see UNICEF website).

The remaining substantive Articles set out children’s rights to care and protection which are adequate for their needs, to health care, social security and an adequate standard of living, to good education, minority rights, play and cultural life, and to protection from economic exploitation, drug abuse, sexual abuse, abduction, cruel punishment, unlawful imprisonment, war and injustice.

Taken together, all the above Articles comprise Part I of the Convention. Parts II and III are concerned with the process of ratification and implementation. Most notably, Articles 43 and 44 establish a Committee on the Rights of the Child, its members elected by the member States, to which States Parties have to report at regular intervals on the progress they have made in implementing the Convention. States Parties are expected to submit a report within two years of ratification of the Convention, and after that every five years.

The Convention was ratified by most member States between 1990 and 1993, and by 1997 had been ratified by every member State except Somalia and the USA. Although both the latter States have signed the Convention, at the time of writing neither has yet ratified and so neither is a Party to the treaty – this despite the fact that the USA played a major role in the drafting process. Australia ratified the Convention in December 1990, and submitted its first report in December 1995.

Member States, when they ratify the Convention, may enter reservations in respect of particular Articles where they consider that local circumstances or values prevent them from complying, provided that these reservations do not prevent them from complying with the Convention more generally. When Australia ratified the UNCRC it entered a reservation in respect of article 37(c), which states that children who are detained in the juvenile justice system should be separated from adults.

In May 2000, two Optional Protocols were adopted by the General Assembly. The Optional Protocol on the Involvement of Children in Armed Conflict requires governments to ensure that children under eighteen are not recruited compulsorily into their armed forces and, so far as possible, do not take part in hostilities. The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography requires states to prohibit the sale of children, child prostitution and child pornography. Most member States have already ratified these protocols (139 have ratified the first, and 141 the second). At the time of writing, a third optional protocol is being developed which would allow children or their representatives to file individual complaints against violations of children’s rights.
Global and local issues

There are some difficult issues in developing international standards while respecting local traditions and taking account of local circumstances. The drafting process for the UNCRC reflects those difficulties, as do the processes of implementation and monitoring.

For example, Article 14 on freedom of religion ‘nearly brought deliberations on the second reading to a standstill’ according to Cynthia Price Cohen (2006), who was present at the discussions. The problem arose from the position taken by delegations from Islamic nations, that the child must follow the father’s religion and could not, according to the Qur’an, make a choice of his or her own. This was resolved by the addition of paragraph 2 on parental guidance which, in Cohen’s view, seriously weakened the final text.

It is sometimes argued that the CRC imposes Western values and standards on countries with a different moral frame of reference. This is not a simple question. Both between and within different cultures there are profoundly different attitudes to matters such as the relative respect accorded to adults and children, to the treatment of disability, to issues of corporal punishment, child labour and many other matters covered in the UNCRC.

The aim of the drafters of the Convention was to set standards that everyone could agree should be the aim for all children, even though in many cases that would present a challenge to existing practice. If implementing the Convention was easy, there might be little value in having it.

At the most profound level, in some Asian and African cultures the very idea of individual rights is less important than fitting in with social customs and expectations. Indeed, the African nations have agreed their own Charter on the Rights and Welfare of the Child, to complement the UNCRC, in which Article 31 sets out the responsibilities of the child to the family and community.

There are also very great differences in social, economic and political circumstances between different countries. Delivering rights to education or income maintenance can be a very different matter in a poor country from a rich one, and protecting children from the effects of civil war, or natural disaster, can be a major challenge.

The UNCRC is intended to represent a global commitment to children’s rights. Article 4 commits States Parties to implement the rights set out in the Convention ‘to the maximum extent of their available resources and, where needed, within the framework of international co-operation.’ International assistance is therefore an important obligation under the Convention, as noted by the Committee on the Rights of the Child in its General Comment No. 5 on ‘General measures of implementation’ (2003).

Other differences in interpretation of the UNCRC may develop over time. The General Comments, which since 2001 have been issued from time to time by the Committee on the Rights of the Child, have had considerable influence on how the UNCRC has been interpreted in policy and practice. For example, in their General Comment No. 8 on 'The
right of the child to protection from corporal punishment and other cruel or degrading forms of punishment’, the Committee declare that ‘there is no ambiguity’ in Article 19, which requires States to ‘take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence’. Note that the Article does not refer explicitly to corporal punishment and there is no record of discussion of corporal punishment during the drafting. However, they add, ‘the Convention, like all human rights instruments, must be regarded as a living instrument, whose interpretation develops over time’ (Committee on the Rights of the Child, 2007). Although abolition of physical punishment (including in the home) was not seen as an objective of the UNCRC when it was adopted, it has now become a major international campaign and many countries have implemented a ban in law, if not always effectively in practice.

**Provision, protection and participation**

One reason for the length of the Convention on the Rights of the Child is due to the range of rights included. In terms of Marshall’s (1950) categories, these encompass civil, political and social rights.

The Convention sets out in some detail children’s rights to all those things that are seen as essential for a good life. These include the fundamental rights to have an identity, to belong somewhere and to be part of a family, and the basic rights to provision of maintenance and housing, health and education. They also include the rights to be part of a culture, to play and leisure, and to develop ones capacities and interests, and to protection from abuse, exploitation and harm of all kinds. These or similar rights were in all the previous declarations of children’s rights, and together they express society’s sense of obligation to do the best for all children and to ensure that they are taken care of and protected until they are old enough to look after themselves.

Articles 12-17 are different from these, in that they articulate rights of participation and self-determination, which are much closer to the civil rights seen as fundamental for adult citizens. The rights to be heard (including in judicial and administrative proceedings), to freedom of expression, freedom of thought, conscience and religion, freedom of association and of peaceful assembly, to privacy and to access to information, are the fundamental rights for which adults struggled for centuries, and which hitherto had often been seen as not applicable to children. Their appearance in the first international Convention on the Rights of the Child represents a substantial shift in the way children are seen.

These rights are qualified, we should note, in ways that they would not be for adults. The views of the child are to be ‘given due weight in accordance with the age and maturity of the child’. States Parties ‘shall respect the rights and duties of the parents ... to provide direction to the child’ in the exercise of the right to freedom of thought, conscience and religion. Such restrictions are not applied to adult rights.
On the other hand, the rights to freedom of expression and to freedom of association are not restricted, except where necessary to protect public order or the rights of others; just as for adults.

It has been said that there are more barriers to the acceptance of children’s participation rights than there are to their provision and protection rights, and there are sometimes thought to be tensions between different types of rights. It will be interesting to consider how these tensions play out in theory and practice.

It may be easier for many people to accept the idea of children as vulnerable and needing care and protection than to accept them as citizens with the right to speak for themselves. However, once we say that children have a right to an identity, to a home, to an education or to protection from abuse, we are committing ourselves to a rights-based approach, and so to a view of children as rights-bearing individuals. Once we do that, we have to reckon with their rights to participation and self-determination.

If we accept Farson’s (1974) claim that the child’s right to self-determination is fundamental to all other rights, and Doyal and Gough’s (1991) definition of basic needs as those that make it possible to participate in social life, then there is no contradiction in principle between rights to participation and other rights. In practice there can be difficult issues on those occasions when what children demand is contrary to what adults consider to be in their best interests, but these are issues to be resolved in practice (and generally through dialogue), not by demoting one right and giving precedence to another.

Evolving capacities

Central to the understanding of the UNCRC is the concept of ‘evolving capacities’. Article 5 reads:

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, 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 present Convention.

Gerison Lansdown (2005) explains the significance of the phrase ‘evolving capacities’ clearly:

The concept of ‘evolving capacities’ is central to the balance embodied in the Convention between recognising children as active agents in their own lives, entitled to be listened to, respected and granted increasing autonomy in the exercise of rights, while also being entitled to protection in accordance with their relative immaturity and youth. It provides the framework for ensuring an appropriate respect for children’s agency without exposing them prematurely to the full responsibilities normally associated with adulthood.

As Lansdown points out, however, the concept is subject to different understandings of child development:

Parents’ aspirations for their children’s development, the expectations and demands placed on children, the cultural, economic and social environments in which they grow up, as well as their own unique life experiences, all
impact on the ranges and level of capacities that children acquire and exercise... Prevailing assumptions about children’s capacities impose static judgements and measurements about ‘normal’ stages defined by Western standards and lead to a pathologising of children who fall outside the ‘normal’ parameters.

Lansdown goes on to argue that active participation in home, school and community life is fundamental to a rights-based approach, and that while children must not be expected to perform or take responsibility at levels beyond their capacity, they are entitled to take responsibility and participate in those decisions and activities over which they do have competence. In this context Lansdown draws attention to the limitations of age-based assessments of competencies.

The Committee on the Rights of the Child refers to ‘evolving capacities’ in its Reports and General Comments, for example in relation to education provided in schools, provision for children affected by HIV/AIDS, and adolescent health services.

**Implementing the UNCRC**

There are a number of ways in which treaties such as the UNCRC can be enforced:

1. They can be incorporated into national law. In a few member States this is automatic upon ratification. However, this is not the case in Australia, where treaties do not form part of domestic law unless specifically incorporated through legislation. This reflects the fact that agreeing to be bound by a treaty is the responsibility of Government, whereas law making is the responsibility of Parliament. Section 51(xxix) of the Australian Constitution, the ‘external affairs’ power, gives the Commonwealth Parliament the power to enact legislation that implements the terms of those international agreements to which Australia is a party.

2. National courts can have regard to the Convention. Although Australia has not incorporated the UNCRC into national law, an Australian court has ruled that ratification of the UNCRC requires ministers to follow its provisions in relevant circumstances (Minister of State for Immigration and Ethnic Affairs v. Ah Hin Teoh, High Court of Australia, April 7, 1995). However, the authority and implications of this judgment have since been called into question.

3. Some treaties enable individuals to make complaints to the UN committee established to monitor that treaty. Any persons, including children, can bring individual complaints under these treaties. At present the UN Committee on the Rights of the Child cannot consider individual complaints under the UNCRC, but an optional protocol is being prepared which may lead to a change in this respect.

4. The UNCRC can be used by parliamentarians, campaigning bodies such as NGOs, and citizens individually or in groups, to advocate for change. The fact that a State is party to the Convention can be used to ‘shame’ a government into action.

5. The Committee on the Rights of the Child, through the reporting process and its Concluding Observations, is an important source of (very public) pressure on member States to implement
the UNCRC more fully. For example, the UK Government for many years maintained a reservation in respect of the rights of children seeking asylum. This was dropped weeks before the 2008 reporting round, in a clear attempt to show the UK in a better light when it reported to the Committee.

6. The Committee also influences implementation of the UNCRC through its General Comments. To give one example, General Comment No. 12 on ‘The right of the child to be heard’ makes it clear that participation is to be interpreted broadly as a right not only for individual children, but also for groups of children or children in general. It also sets out ‘core obligations of States parties’ to review or amend their legislation to provide children with ‘access to appropriate information, adequate support, if necessary, feedback on the weight given to their views, and procedures for complaints, remedies or redress’.

In the next section we look at the work of the Committee on the Rights of the Child, and in particular at the reporting process. After that we will consider how a range of organisations can use the UNCRC in rights-based programming and advocacy for children.

The Committee on the Rights of the Child

The Committee on the Rights of the Child is systematic in its approach to the reporting process. In 1994 it published an overview of reporting procedures (Committee on the Rights of the Child, 1994). This explains that reports from States Parties should ‘contain relevant legislative, judicial, administrative and other information, including statistical data, to give the Committee a good basis for its analysis’. It also stipulates that reports should give information about difficulties encountered and progress achieved, implementation priorities and goals for the future.

The Committee sets up a working group ahead of the reporting process to identify key issues in advance, so that the member State can prepare its responses. The Committee also seeks information from NGOs and UN bodies. Reports are invited from the State party itself and also from NGOs in that country. The discussion of the State party report takes place in open public session, but the Concluding Observations are discussed in private session of the Committee.

Australia, as noted earlier, submitted its first report in 1995. The Committee already had a backlog of work, and the report was finally considered in September 1997. Positive aspects noted by the Committee included the welfare, education and health services available for children, recent amendments to the Family Law Act 1975 and the Crimes (Child Sex Tourism) Amendment Act 1994, and the intention of the State party to ratify the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption.

Principal subjects of concern included the lack of a right of citizens to make complaints in the courts on the basis of the Convention, the reservation made in respect of Article 37(c) (see page 8), the absence of a comprehensive policy for children at the federal level or of monitoring mechanisms at federal and local levels, the disparities between different states’ legislation and practices, and lack of public awareness of the Convention.
Other issues identified in Australia’s 1995 report included: concerns about employment legislation, the age of criminal responsibility; the problems faced by Aboriginals and Torres Strait Islanders and children of non-English-speaking backgrounds; the failure to prohibit corporal punishment; levels of child abuse and violence within the family; local legislation that allowed the police to remove children and young people congregating; maternity leave provision; homelessness amongst young people; suicide among young people; female genital mutilation; the treatment of asylum seekers and refugees and their children; the treatment of children deprived of their liberty; the high percentage of Aboriginal children in the juvenile justice system; and that the general principles of the Convention, in particular those related to non-discrimination and respect for the views of the child, were not being fully applied.

Suggestions and recommendations included that the State should: review its reservation to article 37(c) with a view to its withdrawal; create a federal body responsible for drawing up programs and policies for the implementation of the Convention and monitoring their implementation; and take specific steps to tackle all the concerns listed above.

A combined second and third report was submitted by Australia in 2003 and was considered by the Committee in September 2005. The combined report set out the steps taken by the Federal Government to address the concerns in the earlier Concluding Observations. These steps included the appointment at Federal level of a Minister for Children and Youth Affairs and a Department of Family and Community Services which, it was contended, would do much to address the strategic weakness identified by the Committee.

A detailed non-government report was also submitted on behalf of a large number of organisations. It was based on extensive consultation, which was highly critical of the official report in many areas of policy and practice (National Children’s and Youth Law Centre and Defence for Children International (Australia), 2005).

In its Concluding Observations on Australia the Committee noted that most of the concerns expressed in 1997 had been addressed, but some insufficiently, or only partly. These included the problems faced by Indigenous children, corporal punishment, homelessness among young people, children in immigration detention and the high percentage of Indigenous children in the juvenile justice system.
The Committee urged Australia to take all necessary measures to give more effective follow-up to these recommendations as well as to its comments on the 2005 report. The latter included around forty detailed recommendations on matters ranging from implementation and monitoring, resources for children and data collection, to corporal punishment, alternative care, abuse and maltreatment, health care, standard of living and sexual exploitation. The reservation made in respect of article 37(c) was again an issue, with the Committee not accepting the Government’s justification for this.

The Committee also urged better dissemination of the UNCRC and the reports, and that the State:

...strengthen its efforts to bring its domestic laws and practice into conformity with the principles and provisions of the Convention, and to ensure that effective remedies will be always available in case of violation of the rights of the child (Committee on the Rights of the Child, 2005).

Australia’s fourth report was submitted in 2008 and is still awaiting consideration by the Committee. At the time of writing (January 2011) the Child Rights Taskforce, convened by UNICEF Australia and the National Children’s and Youth Law Centre, is preparing a parallel NGO report.

An extensive consultation process is under way nationally with a number of submissions already received by the Taskforce. An online survey was recently made available for children and young people to give their views about various issues related to the UNCRC. The NGO report will be considered by the UN Committee when it assesses Australia’s performance under UNCRC in early 2012.

What is notable about the reporting process is the level of detail and the consistency with which issues are followed through from one reporting round to the next. The Committee often sends visitors to the country prior to the submission of the report, and also takes direct representations from young people. This is a very substantial task, when 194 countries are required to report every five years. The Committee normally holds three sessions each year, consisting of a three-week plenary and a one-week pre-sessional working group. In 2010 the Committee considered reports in two parallel chambers of nine members each, as an exceptional and temporary measure to clear a backlog of reports.
Children’s rights programming

Many organisations, particularly NGOs working in international community development, seek to apply children’s rights principles in planning and implementing their programs. The approach known as ‘children’s rights programming’ (CRP) has been developed by Save the Children and other organisations. According to the International Save the Children Alliance (2005), such programs:

- integrate the normative framework of the UNCRC, providing legitimacy, a reference point and engaging with its monitoring mechanisms;
- employ the general principles of the UNCRC as a filter mechanism, creating a systematic focus on non-discrimination, the views of children, children’s survival and development and their best interests;
- engage with duty bearers, who are identified, supported and held to account;
- use evidence-based advocacy to increase the scale of impact on children;
- operate at all levels of society, ensuring links from one level to another;
- employ participatory, analytical and empowering processes;
- seek a measurable impact on children and their rights;
- take a long-term perspective, while addressing urgent and immediate rights violations;
- consider a variety of partners and diverse forms or partnership;
- ensure that children are recognised as whole people with dignity and evolving capacities; that they are empowered to speak out, be heard and become an integral part of the program.

Note: ‘Duty-bearers’ are defined by the United Nations as State and non-State actors with obligations to rights-holders.

According to Joachim Theis (2004), a rights-based approach to programming requires:

- long-term goals with a clear focus on people and their rights;
- working together with other government and non-government agencies towards common rights-based goals;
- concentrating on the worst rights violations and paying particular attention to the most marginalised people;
- strengthening the accountability of duty-bearers for human rights at all levels; and
- supporting rights-holders to demand their rights.
For Theis, the key methods used in rights-based programming are to:

- pressure decision-makers to change policies, laws, programs and budget allocations;
- mobilise people to demand changes in policies and resource allocations;
- utilise mass media to raise awareness and to report abuses of power and rights violations;
- establish and monitor standards, rules and procedures and create systems of incentives and sanctions to enforce these standards;
- audit the quality of government services;
- monitor and report human rights violations;
- establish and support human rights watchdog organisations and functions;
- educate the public and decision-makers about human rights; and
- use courts to claim entitlements and to achieve justice and equality.

These approaches are used by international NGOs such as Save the Children and inter-governmental bodies such as UNICEF, to advocate and promote the rights of children as set out in the UNCRC in a way that increasingly establishes the idea of children as rights-bearers and citizens with a contribution to make. Such approaches differ from needs-based approaches, which tend to construct children as dependent, vulnerable and lacking in self-determination.

**Commissioners and ombudspersons for children**

Another important way to advance children’s rights, and to underpin their ‘mainstreaming’ (see below), is through the appointment of independent advocates for children. Such institutions, usually referred to as Children’s Commissioners or Ombudsmen, predate the Convention on the Rights of the Child. Norway’s Ombudsman for Children was established in 1981, with a mission to monitor the rights of all children in Norway. In the USA the Rhode Island Office of the Child Advocate was established even earlier in 1979, but with the narrower objectives of protecting the rights of young people in state care.

Since then, especially since the adoption of the UNCRC, many institutions have developed that operate (broadly speaking) on the Norwegian model, with a general commitment to children’s rights. This is particularly so in Europe, which now has more than 30 independent children’s ombudspersons, mainly established at the national level but with many also functioning at a regional or sub-national level.
Children’s Commissioners usually have independent powers to monitor policies and services and advocate for children’s rights and interests, and also to investigate breaches of children’s rights and recommend remedial action. They also often have responsibilities to promote children’s views and wishes, and may work with organisations that represent children and young people’s voices directly. In the USA, which has never ratified the UNCRC, most states now have Advocates or Commissioners based on the more restricted Rhode Island model.

One of the first General Comments issued by the Committee on the Rights of the Child addressed the need for such institutions:

*It is the view of the Committee that every State needs an independent human rights institution with responsibility for promoting and protecting children’s rights. The Committee’s principal concern is that the institution, whatever its form, should be able, independently and effectively, to monitor, promote and protect children’s rights. It is essential that promotion and protection of children’s rights is ‘mainstreamed’ and that all human rights institutions existing in a country work closely together this end. (Committee on the Rights of the Child 2002, p.2)*

In Australia, every State and Territory now has a Children’s Commissioner or Guardian. In most cases these offices have a general mandate to promote the well-being (or in some cases the rights and well-being) of all children and young people. In the Northern Territory and South Australia the brief is limited to ‘protected and otherwise vulnerable’ children or to children in out-of-home care. New South Wales has both a Commission for Children and Young People, with a general brief, and an Office of The Children’s Guardian with a care and protection brief.

There have been demands that Australia should also establish a national Children’s Commissioner, as New Zealand has done. Vocal in pursuing such a role have been Save the Children, Australia and also the Australian Human Rights Commission, which recently released a Discussion Paper outlining the case for a national advocate. In its Concluding observations in 2005, the Committee on the Rights of the Child recommended that there should be an office within the Human Rights Commission devoted to children’s rights at the federal level.

There has, so far, been little evaluation of Children’s Commissioners or Ombudsmen, which is surprising since they have been a significant feature of children’s rights promotion for several decades now. Exceptions include the evaluation of the Children’s Commissioner for Wales by a group of young people working with academic researchers (Thomas et al., 2010), a global survey conducted by the UNICEF Innocenti Research Centre (not yet published) and research currently being undertaken with the European Network of Ombudspersons for Children (Thomas, Gran & Hanson, forthcoming).
Mainstreaming children’s rights

The challenge of children’s rights for future policy is to move on from advocacy and special pleading to ‘mainstream’ children’s rights in policies and institutions across the board. This means building children’s rights into the thinking of local authorities and a range of civil society organisations.

One of the most recent policy initiatives in Australia to incorporate an explicit emphasis on children’s rights is the development of the Early Years Learning Framework (EYLF), which now guides the provision of early childhood education. The EYLF document, titled Belonging, Being and Becoming, highlights the central role of children’s rights in the provision of quality teaching and learning in the early years (birth to 5 years):

*Early childhood educators guided by the Framework will reinforce in their daily practice the principles laid out in the United Nations Convention on the Rights of the Child (the Convention). The Convention states that all children have the right to an education that lays a foundation for the rest of their lives, maximises their ability, and respects their family, cultural and other identities and languages. The Convention also recognises children’s right to play and be active participants in all matters affecting their lives (p.5).*

In a similar vein, Australia’s National Framework for Protecting Australia’s Children 2009-2020 signals the fundamentally important role that the UNCRC plays in guiding services and outcomes aimed at reducing child abuse and neglect and promoting the safety and well-being of children:

*Children have a right to be safe, valued and cared for. As a signatory to the United Nations Convention on the Rights of the Child, Australia has a responsibility to protect children, provide the services necessary for them to develop and achieve positive outcomes, and enable them to participate in the wider community (p. 12).*

The policy document then goes on to outline the principles underpinning the National Framework, explicitly highlighting their resonance with the UNCRC.

Whilst policy rhetoric does not in itself produce changes in practice, in the Australian social and political context such developments are a significant step forward in mainstreaming children’s rights.
Rights education

We are also beginning to see a range of resources being produced for children, young people and also for adults to help educate about children’s rights. These resources take a range of forms, from posters, pamphlets and training programs to multimedia resources such as DVDs and interactive websites.

Such resources all make an attempt to support professionals working with children and young people to promote awareness and understanding of children’s rights, to challenge attitudes about children and young people and ultimately to improve children’s lived experience.

Future directions for research and practice

In concluding this Background Briefing, it is worth taking a moment to reflect on how children’s rights are likely to develop in future, in terms both of thinking and implementation, and on some of the challenges which may have to be faced.

There is still considerable scepticism about the idea of human rights in many if not all societies, East and West, North and South. Powerful voices in politics and the media are often ranged in opposition, both to practical extensions of rights and to the concept of rights itself, and these attitudes are frequently replicated in popular culture. These things are doubly true when children’s rights are at issue, because of the many ways in which children are devalued or marginalised, their perspectives ignored and their status as persons (let alone citizens) diminished.

One challenge therefore for those who are committed to children’s human rights is to defend that discourse and to continue to promote the idea of children’s rights. The campaign for children’s rights has undoubtedly made very substantial advances in recent years, but for this to continue that commitment will be necessary. The many statements of principle that have been made by government bodies are a major step forward, but it remains to be seen how effectively they are followed up by (i) further incorporation of children’s rights in law, (ii) mainstreaming of children’s rights in service organisations and civil society and (iii) practical measures to make those rights a reality in children’s lives. This will demand work at all levels of government and society.
This links with a second challenge, which is to find ways to ensure that children’s rights make sense in different cultural contexts, and are not seen as merely an external imposition that goes against the grain of traditional values. This does not apply only to Indigenous groups or to less ‘advanced’ societies. All cultures change and adapt, and conventional practices sometimes need to be challenged, but this requires approaches that are sensitive, nuanced and tactically astute.

A third challenge is to find the best ways of dealing with all those situations where, in practice, there may seem to be conflicts or contradictions between the different rights which children have. For example, one respect in which more ‘modern’ societies may find children’s rights difficult is in relation to the growing emphasis on child protection (which is often associated with more general anxieties about risk and organisational imperatives to manage risk cautiously). Both in theory and in practice this tends to impinge on children’s freedom and rights to participate fully in society.

As well as challenges for practice, there are also important questions for research. For example, there are questions around how people understand children’s rights, what rights do people think children have, and how might these views be changing? These question may be asked in relation to service providers and to different groups in society, including (of course) children themselves. There are also questions to be considered regarding the impact of children’s rights implementation. Does children’s rights programming have a different kind of impact from needs-based approaches? How much difference do particular initiatives actually make to children’s lives?

As students and practitioners we all have responsibilities, and opportunities, to pursue some of these research questions, as well as responding to the challenges for practice.
References


Committee on the Rights of the Child (2007). *General Comment No. 8: The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment*, CRC/C/GC/8.


About the Centre for Children and Young People

The Centre for Children and Young People (CCYP) was established at Southern Cross University in 2004. The CCYP works collaboratively with organisations, particularly in regional and rural areas, to enhance policy and practice related to the well-being of children and young people.

The Centre has three priority areas: Research, Education and Advocacy.

For more information about the CCYP, visit ccyp.scu.edu.au

About the Course

The Graduate Certificate, Graduate Diploma and Master of Childhood and Youth Studies are awards which have been developed collaboratively by the Centre for Children and Young People and the School of Education at Southern Cross University, Australia. The awards meet a recognised need, expressed by a range of professionals, for contemporary knowledge and skills to assist them to work more effectively with children, young people and their families.

The course seeks to be an innovative, professionally relevant, practical and interdisciplinary qualification for people working, or intending to work, with children, young people and their families. Applicants can enrol in any one of the awards or complete individual units as professional development.

Units are delivered externally so that students can successfully study at a distance. Each unit has authentic and professionally relevant assessment and the five core units involve optional but highly recommended summer/winter intensive workshops of 2 days duration. Students who are unable to attend are able to engage with workshop content and processes live online or via recorded formats.

The course incorporates innovative and appropriate use of technology to support students’ learning, opportunities for regular engagement with tutors and fellow students and (where appropriate) multimedia elements.

The course is underpinned by a deep respect and regard for children and young people and for their views and perspectives. It also incorporates an understanding that children and young people can benefit immensely from positive relationships with adults – parents, teachers and the myriad professionals with whom they may engage over the course of their childhood. The course embraces multidisciplinary perspectives in the belief this can enhance service provision and lead to improved outcomes for children and young people.

For more information about these awards, visit www.scu.edu.au/childhoodstudies
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