

International Update

THE CONVENTION ON THE RIGHTS OF THE CHILD

NASW International Committee

Children's Rights in Context

Historically, the discussion of children's rights began with the League of Nations in the adoption of the Declaration of Geneva, in which the first steps were taken towards international norms to protect children. In 1959, the United Nations General Assembly adopted the UN Declaration on the Rights of the Child, a document more detailed than the League of Nations document, but only a statement of principles, and not a binding agreement for member states. It was not until 1979 during the International Year of the Child that the Polish government proposed the idea of a convention for children's rights. The UN Convention on the Rights of the Child (UNCRC) was the direct result of ten years of work from that moment (Hammarberg, 1990).

What is the UNCRC?

The United Nations Convention on the Rights of the Child (UNCRC), adopted by the General Assembly in November, 1989, is the primary international instrument to address the rights of the world's children – defined as people under the age of 18. While the Universal Declaration of Human Rights in Article 25(2) extends special care to motherhood and children, the UNCRC delineates in much broader detail what this special care to children would encompass. The Convention defines children as human beings who deserve dignity and human rights. It stipulates that children have the right to survival through adequate health care, food, clothing, and shelter and it endorses children's rights to education, freedom from discrimination and a safe environment (Herrmann, K., 1991, pg. 103). The Convention also acknowledges and recognizes children as children, and the document contains language that values the importance of a happy childhood (Articles 27, 28, 29 and 31) (Hammarberg, 1990).

The countries that ratify the UNCRC have precise obligations for the implementation of the UNCRC.

The Convention establishes the Committee on the Rights of the Child as the mechanism to monitor and receive country reports. Currently, 193 countries have ratified the Convention; the two countries that have always been noted as not ratifying have been the United States and Somalia (*International Debates*, 2009). On November 20, 2009 the transitional government of Somalia announced that it planned to ratify the CRC, leaving the United States as the only country in the world that has yet to ratify (Reuters, November 20, 2009).

Children's rights as defined by the UNCRC

The UNCRC begins from the premise in the UN Declaration of Human Rights that childhood is entitled to special care and assistance (Article 25(2)). This is a fundamental concept and the foundation for the entire text of the UNCRC. It holds as fundamental that the family – the main group of society that promotes the growth and well-being of children – should be “afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community” (UNCRC, 1989, Preamble). These two statements ground the UNCRC as a document that supports children AND families and provides measures that will enable the child to eventually be prepared to lead a full life.

Many references are made to the specific rights of the CRC, as the three “P’s”, as they are called: *provision rights* – the right to have one's basic needs fulfilled (food, education, healthcare, and a basic standard of living), *protection rights* – the right to be protected from harmful acts or practices (from neglect, physical or mental abuse, discrimination, exploitation), and *participation rights* (the right to act in certain circumstances and the right to be heard in decision-making). Others have added a fourth “P” to this list: *promotion* – which is captured in Article 42 of the UNCRC and relates to dissemination of the principles and provisions of the Convention. Without dissemination and promotion, these rights are meaningless

as they will not be implemented nor will they be fought for (IFSW, 2002, Hammarberg (1990).

Using the CRC as a working document

The rights that are stated in the UNCRC are varied in their ability to be utilized. As Alderson (2008) explains, some rights are *aspirational* – realizable ‘to the maximum extent of [each nation’s] available resources’ (Article 4). Some of the rights are *conditional* – they rely on the ‘evolving capacities of the child’ (Article 5) and then some are *shared* – between the parent, and the state (Alderson, 2008, pg 15). As countries ratify the CRC and begin to implement its principles, there will be variability on strength and implementation depending on several factors: the resources of the individual country and the cultural implications of shared responsibility between parents and the state.

The CRC also has two Optional Protocols that provide specific protection to children. The Optional Protocol on the Involvement of Children in Armed Conflict entered into force in February 2002. This Protocol limits the age at which children can be recruited for armed conflict (age 18) and requires states parties to provide appropriate physical and psychological rehabilitation to children who have participated in armed conflict.

The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography entered into force in January 2002. It requires states parties to criminalize child pornography and prostitution, close the establishments that support these activities and seize the proceeds from such activities (International Debates, 2009).

One of the best ways to visualize the UNCRC as a working document is to view it from a children’s rights perspective that has 5 specific building blocks:

1. Accept that children are people now – not people-in-the-making. This accords all children full human status from birth;
2. Accept that childhood is valuable in its own right and is not simply a stage towards adulthood;
3. Accept that children can be active agents of their own lives;
4. Accept that children should not be treated less seriously just because of their age;
5. Address the special vulnerability of infants and children (IFSW, 2002, pgs 8-9).

U.S. Reluctance to Ratify the CRC

Opposition to the ratification of the CRC in the United States has come from a number of corners. First, there is the argument of sovereignty. In the realm of international law, sovereignty refers to the independence of nations. “...giving force to transnational rules laid down by non-American decision makers surrenders U.S. sovereignty. The reasoning appears self-evident: sovereignty as a “final say” is a *sine qua non* of statehood, and it is indivisible. To the extent that a state is subject to law made elsewhere, it has lost its sovereignty and, perhaps in some deep way, its right to call itself a ‘state’” (Rutkow and Lozman, 2006, 174).

Related to this is also the federalism concern. The United States is a federalist system. Federalism is usually thought of as a government system where power is shared between a central authority and its constituent political units (the states). In such a system, federal power is limited so that state sovereignty is protected. So as an example, the CRC has provisions in it (like the articles that focus on the protection of children from all forms of abuse) that right now are encapsulated in laws at the state level. In a federalist system, state regulation takes priority on a number of issues. The impact on federalism as a reason to stall ratification has been used by the United States for nearly every human rights treaty (Rutkow and Lozman, 2006).

For the CRC, the sovereignty and federalism arguments are also cited, but there are other issues for the CRC that are used against ratification. The CRC has had some harsh criticism as to its significance on the family and the role of parents. The focus on children’s rights naturally brings into the discussion the issue of parental rights. This can sometimes turn the debate on child rights into a debate on legal status, and the question of whether children are or are not fellow-citizens. The UNCRC explicitly supports parents in their responsibilities, rights and duties as parents (Articles 5, 9, 10, 14, 18). Parents are seen in this document as having the primary responsibility for the upbringing of their child(ren). The document further states that these responsibilities should be consistent with the ‘evolving capacities of the child’ (Article 5), and there are a number of supports given to parents and their rights in relation to state authorities. “This means that the parents are to be recognized in terms of an irreplaceable pedagogical responsibility, that the state should help and assist parents in their child-rearing

responsibilities, and that the state should not interfere, unless parents fail to act in the best interests of the child” (Roose & Bouverne-De Bie, 2007, pg 436).

Another aspect of the Convention that can be seen as clashing with parental views is the insistence on respecting the views of the child, and including the child’s voice in decision-making. Many would argue that children do not know what is best for them or that they have not developed cognitively enough to make sound decisions. However, if children are accorded human dignity through the demonstration of their human rights, then they have the right to be heard and listened to. “Children are entitled to the freedom to express opinions and to have a say in matters affecting their social, economic, religious, cultural and political life. Participation rights include the right to express opinions and be heard, the right to information and freedom of association. Engaging these rights as they mature helps children bring about the realization of all their rights and prepares them for an active role in society” (www.UNICEF.org, 2/15/09). Implicit in the UNCRC is the notion that protecting and promoting children’s rights will help children develop to their fullest potential and become well-developed, functioning members of an adult society.

What can social workers do?

1. To learn more about the CRC and how you can get involved, visit <http://childrightscampaign.org>.
2. Help your state pass laws that follow the CRC.
3. Incorporate the CRC into your course curricula if you teach any courses on children.
4. Use the CRC as a tool to evaluate and guide the development of your organization’s policies and programs.
5. Write Letters to the Editor and Op-Eds. in support of the CRC.
6. Raise awareness in your community – host a local event, such as an educational presentation on the CRC.

References

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