

GENERAL MEASURES OF IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF THE CHILD

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The Convention on the Rights of the Child (CRC) is the most widely ratified human rights treaty.

More importantly, more than 15 years of efforts to implement the Convention have led a process of social change and a new perception of childhood. Increasingly, children are envisaged not simply as vulnerable human beings and passive recipients of assistance and protection, but as agents of change. With their ideas, creativity, expectations and demands, they have an inspiring ability to enrich our vision of the world. As a result, children's rights are being gradually recognised as a question of good governance and good economics.

But how seriously do we take children in our societies? To what extent do they actually benefit from the legal and policy measures taken on their behalf? How much progress has been made so far and how much more might have been achieved? If the CRC is to be transformed into reality, these are questions that any society should be able to answer.

The CRC has gained undeniable relevance throughout the world. It has given greater visibility to issues concerning children, has served as a reference point for the development of new laws and public policies, and has laid the foundation for new standard-setting activities¹ and for an enhanced international cooperation in favour of children. But to what extent have the commitments made by States parties to the CRC led to the adoption of concrete measures to improve the rights of children? To what extent have the measures taken had a real impact on the lives of children? To what extent has the holistic approach of the CRC informed its process of implementation? What should our priorities be in 2007, given our collective experience of several years of striving to implement the CRC and the social, economic, scientific and political changes that have occurred during this time?

To address these important questions it is important to document and analyze the process of implementation of the CRC, monitor change, assess hampering factors and opportunities

for progress. Evidence-based analysis is critical to consolidate success and inform further improvement. These are the reasons behind the study on the implementation of the Convention on the Rights of the Child developed by the UNICEF Innocenti Research Centre.

The study concerns the implementation of the CRC in 62 countries worldwide. It is based mainly on the reports that States parties have presented during the last 15 years to the Committee on the Rights of the Child.

The Committee was established by the CRC to evaluate the efforts made by States in the process of implementation of the CRC. The Committee has also played a valuable role in advancing the understanding of the principles and provisions of the CRC, through a series of General Comments on key children's rights topics.²

The study focuses on General Measures of Implementation of the CRC. These are cross-cutting measures that contribute to the realization of all the rights contained in the CRC, and therefore avoid pursuing a sectoral and fragmented approach. What are these measures? They include:

- ___ law reform
- ___ institutional reform, including coordination mechanisms and independent institutions for children's rights
- ___ monitoring of progress in the implementation of the CRC
- ___ comprehensive national agenda for the implementation of the CRC
- ___ allocation of resources to children to the maximum extent of their availability
- ___ education, training and awareness raising on children's rights
- ___ participation of the civil society including child participation

The Committee on the Rights of the Child has emphasized the fundamental importance of these measures to the effective realization of the whole range of rights contained in the CRC and has issued a specific General Comment on the general measures of implementation.³ In addition, during the 2002 Special Session of the General Assembly on Children, Member States of the United Nations made a commitment to improve the further development of these measures throughout the world.⁴ Later this year, the General Assembly will review the progress made in fulfilling this commitment. There also is a third reason, namely, that these general measures of implementation can be seen as an indicator of the degree of commitment each State has to reaching the ultimate goal of ensuring that each child enjoys each of the rights contained in the CRC.

What are the main findings of the initial phase of the study on the process of implementation of the CRC?

The study confirms that the ratification of the CRC has had significant consequences in all of the countries studied. And it has particularly highlighted the following aspects:

- ___ First, there have been extensive and substantial changes in legislation concerning children. Nearly a third of the countries reviewed have incorporated the CRC into their national legal framework. In a number of cases child rights provisions have been incorporated in the Constitution – in Latin America and in Central and Eastern Europe this trend has been most pronounced; in Western Europe constitutional amendments have been introduced at times, as was the case in Iceland in 1995 and in Belgium in 2000. In South Africa, the Constitution

recognises children's fundamental rights and freedoms and highlights the paramount importance of the child's best interests in every matter concerning the child.⁵ In many cases the provisions of the CRC prevail over national legislation. This has allowed national courts to take a more active role in safeguarding the rights of children. This is clearly illustrated by the decision of the Constitutional Court of the Czech Republic which overturned part of the Family Code as a result of its incompatibility with the CRC and Charter of Fundamental Rights; by Supreme Court judicial decisions in Romania on adoption based on the principle of the best interests of the child; and by the decision of the Italian Corte di Cassazione promoting the protection of children from corporal punishment.

___ Secondly, many countries have adopted new legislation or amended existing laws to ensure greater conformity with the CRC – even countries that initially thought that their legislation was perfect and no changes were required. Law reform is, in reality, a never ending process, in part because laws do not always produce the expected results, in part because social expectations evolve, and in part because new problems arise. The challenges arising from new technologies are just one important example. As an illustration, Canada has adopted new legislation at the federal level concerning juvenile justice; and most provinces have made substantial legislative reforms, in particular in areas of family law including on adoption.

The process of law reform has had different characteristics in different States. This, too, is to be expected. There is no simple model that all countries can follow. Law must be adapted to the historical, social, cultural, economic and political context of each country.

___ Some countries have adopted comprehensive laws based on a holistic approach of the CRC. The Statute on Children and Adolescents in Brazil, in force since the early years of implementation of the CRC, was probably the very first. The Ley Organica on the legal protection of the child, enacted by Spain in 1996 is another meaningful illustration of this approach.

___ Other countries have taken a sectoral approach to law reform, gradually modifying the laws in different sectors considered a priority, such as family law, juvenile justice, protection from violence, and so on. Experience shows that neither of these approaches is sufficient, in and of itself; both are needed to bring the national law fully in conformity with the CRC.

The wide range of changes introduced in the national legal framework to ensure conformity with the provisions of the CRC is one of the most significant illustrations of the process generated by the adoption of the CRC. In a number of areas earlier legislation rarely if ever provided adequate protection to the rights of children, and has since then received considerable attention by legislators throughout the world. The following areas provide significant examples:

___ In the area of sexual exploitation, many countries have filled gaps in their law concerning the types of abuse prohibited, giving their courts jurisdiction over acts committed abroad in order to combat sex tourism, and adopting norms designed to prevent the "revictimization" of child victims. The 1996 Stockholm Congress against Commercial Sexual Exploitation, and the 2001 Yokohama second Congress helped mobilise action in this direction.

___ A few countries have taken steps to prohibit all forms of violence against children, including

corporal punishment within the family. The UN Study on Violence against Children, endorsed by the General Assembly in 2006, has become a decisive catalyst to move the process forward. Its recognition of law reform as a key area for follow-up will keep the call for a full legal ban high in the agenda. Over the very recent past promising developments are consolidating this process. Indeed, in October 2006 Greece joined the group of countries which have introduced an overall ban on all forms of violence and in early 2007 the Netherlands have amended their Civil Code to achieve the same purpose.⁶

___ Many countries have modified their laws on adoption and introduced new and specific provisions on inter-country adoption to ensure that policies and procedures are guided by the best interests of the child and comply with the safeguards set forth in the CRC; moreover, the Hague Conference on International Law developed a specific treaty on this topic designed to help States comply with their child rights obligations.

As important as these achievements may be, many challenges persist.

In looking ahead, it is necessary to continue identifying and filling gaps in legislation on the rights of the child. The general principles of the CRC need to be incorporated into all relevant pieces of legislation – non-discrimination, best interests of the child, respect for the views of the child and promotion of the child’s development are essential dimensions of the process of implementation. The protection of children against discrimination and violence, and a system of due process for juveniles that conforms to international standards are some of the areas that also need priority attention in many of the countries studied.

Second, it is urgent to ensure that laws on the rights of children are properly implemented. Legislation is an essential yet insufficient component of a comprehensive approach to protecting the rights of children. It needs to be accompanied by

___ training and re-training of the professionals and paraprofessionals that will be responsible for their enforcement

___ making the public, including children, aware of children’s rights and of the procedures for ensuring their safeguard

___ investing in programmes and services for children and their families,

___ and through the on-going monitoring of the impact of new legislation on the enjoyment of children’s rights.

A second dimension addressed by the study relates to the important processes of institutional reform promoted by the CRC

On one hand, the CRC has led to the development of independent institutions for the promotion and protection of the rights of children – Ombudsmen for children, Children’s Commissioners, Defensores de los Niños and similar bodies. On the other, it has contributed to the establishment of governmental mechanisms to coordinate activities concerning children.

What does the Innocenti study indicate?

The spread of independent institutions for the rights of children has accelerated rapidly during the last 15 years. In 1981, Norway became the first country in the world to establish an ombudsman for children. Following the adoption of the CRC similar institutions have been established in many countries, either at the national or the sub-national level, or both.

Clearly this is no longer a fragile or tentative movement! For this reason, the Special Session on Children called on all States to consider “establishing independent ombudspersons for children for the promotion and protection of the rights of the child.”⁷ The research conducted on the role of children’s rights institutions confirms the crucial role they play in a number of areas, including by:

— ensuring systematic attention to children, in many cases through the submission of annual reports on the situation of child rights

— acting as a vehicle to ensure that children’s views are heard and taken into account by policy makers

— monitoring progress in implementing the CRC, identifying challenges and recommending policies and actions designed to overcome them.

Many different models of independent institutions for children’s rights have been adopted. In a number of countries, an ombudsman with a broader mandate or a national human rights commission has established a separate unit or focal point specialized in child rights. In Greece, a child rights department was set up in the Office of the Ombudsman based on separate legislation. In other countries, a distinct Ombuds for children has been established, as is the case in Norway and Sweden. Each country should consider what the best approach is to safeguarding the human rights of children in the light of its history, culture and institutional framework.

A second finding concerns the legal foundations of these institutions. It is their statutory basis that secures their independence, authority and legitimacy to act on behalf of children. Legislation also serves to clarify their role vis-

à-vis other mechanisms and institutions, such as parliamentary committees and governmental “observatories” on children.

A third finding concerns the critical importance of independence. These institutions must act independently and impartially, guided by the best interests of children and not by any political or institutional ambitions or loyalties. Independence depends in part on the values and moral integrity of the ombudsman or commissioner, but is also linked to structural and legal safeguards.

The process of appointing the ombudsman or commissioner is a crucial part of ensuring real and perceived independence, which is why the Committee on the Rights of the Child recommends a transparent, open and competitive selection process. In this regard, it is encouraging to note the development in some countries of a screening process in which the profile of candidates is openly assessed, in the light of the best interests of the child. In Ireland and Wales, children themselves have been consulted as part of the process of selecting the Commissioner. With their involvement, the visibility, legitimacy and authority of the institution have been enhanced.

To be effective, these institutions also need to be given adequate human and financial resources. Here again there is wide diversity. The large, multi-disciplinary staffs of some will clearly be able to afford a level of protection beyond the reach of institutions with smaller staffing levels. Moreover, all need to be supported by good research and this is why the Innocenti Research Centre is pursuing work in this area.

Respecting the right of children to be heard and to have their views taken into account is an essential part of promoting and safeguard-

ing their rights, which is why many children's ombudsmen and commissioners are paying increasing attention to the participation of children. Indeed, several have realized that taking the views of children into account has helped them make their activities more effective and more relevant to children.

Some organize periodic meetings with children to this end and others, like the Norwegian ombudsman, have established advisory bodies composed of children. Legislation establishing some recent institutions requires them to offer children opportunities to express their opinions and to ascertain the wishes and feelings of children in the examination of cases under consideration.

In short, the findings of the study confirm that independent children's rights institutions make a unique and invaluable contribution to promoting and protecting the rights of the child. Similarly, the study confirms the importance of respecting the independence of such institutions and ensuring that they have the resources needed to fulfil their mandate. Finally, it indicates the importance of converting these institutions as a forum for making children's voices heard and their views taken into account.

Coordination mechanisms for the implementation of the CRC

The second important institutional change concerns the development of governmental mechanisms to coordinate action on children and ensure the safeguard of their rights. The need for coordination is strongly linked with the holistic and integrated approach to children that underlies the CRC.

What the Innocenti study reveals is a growing concern for the articulation of activities

and coordination amongst government departments, and between national and regional authorities, for the promotion of policies concerning children's rights.

Coordination has been pursued in different ways and following different models.

___ Several countries have entrusted responsibility for coordination to line ministries or departments⁸ while a few others have established a Commissioner.⁹

___ In some cases two coordinating mechanisms have been set up – one to promote the articulation of activities of departments of the central government, and another to promote coordination between the central and regional authorities.¹⁰

___ In a few other countries coordination is promoted through an inter-ministerial mechanism.¹¹

The mandates of these mechanisms also vary.

___ Some are expressly designed to coordinate overall implementation of the CRC; in most their role is defined in terms of child welfare policies, laws and plans.

___ Some are devoted exclusively to coordination, while others also promote awareness of child rights, develop policies and undertake monitoring.

___ Some are established by law, and consequently may have the authority to adopt binding decisions; others are set up by simple administrative decision and only have the power to make recommendations to participating agencies.

To move ahead, more and better is required. Solutions will need to be tailored to the specific

context of each country, but the Innocenti research suggests three lessons that are relevant in any country:

___ political priority must be given to multi-disciplinary and cross-sectoral cooperation, and coordination between central and regional authorities;

___ ministries of finance and planning must be involved in this process;

___ civil society must be associated to mobilize support and action in favour of the realisation of the rights of children.

Monitoring the implementation of the CRC

Beyond legal and institutional reforms, progress in the realization of children's rights is closely linked with State's openness and ability to monitor change, acknowledge challenges and introduce required adjustments in law, policy and practice.

Monitoring is an essential dimension of the process of implementation of the CRC. It entails a broad effort to measure objectively the extent to which all children in a given society actually enjoy the civil, political, economic, social and cultural rights recognized by the CRC. It is therefore a comprehensive and on-going task designed to sustain progress and promote the steady improvement of the reality of each and every child.

Yet, the Innocenti study suggests that there are a number of misperceptions that undermine government's efforts and achievements.

___ Monitoring is sometimes seen as simply reduced to international accountability, in particular reporting to the Committee on the Rights of the Child. Although important, this approach

ignores the primary value of monitoring as a tool to inform advocacy, policy making and resource mobilization for children at the national level.

___ Secondly, monitoring is often associated with criticism and even condemnation of serious violations of the rights of children. In reality, the goal of monitoring implementation of the CRC has a much broader scope and should not be reduced to simply focus on a particular type of violation; monitoring is designed to achieve a process of change supported by reliable disaggregated data on all the rights and principles of the CRC, and informed by evidence to overcome challenges compromising the realisation of children's rights. Translating the principles and provisions of the CRC into reality is a long term – and, indeed, endless – process, in which there will always be room for improvement and the need to consolidate the progress made.

___ Thirdly, the relevance of monitoring is too often seen as limited to a few areas or sectors – in particular health and education – where systems of data collection and analysis have long been in place and quantitative data may be easily available. However, the process of implementation over the last 15 years clearly demonstrates that objective, quantifiable assessment of progress is needed to evaluate implementation of all the rights recognized by the CRC. The challenge – which many States are beginning to face, with the help of academia, child rights organizations and UN agencies – is to develop new indicators and methods of measurement. If we fail to do so, millions of children will remain invisible to policy makers.

___ Still another challenge is the limited investment in disaggregated data. Averages may accurately portray a general situation, but they also

hide discrepancies of many kinds and fail to identify the groups of children at greatest risk.

These are important challenges that must be overcome to accelerate progress in safeguarding the rights of children. But we can build upon the important advances that have been made during the last 15 years. Today there is greater recognition of the need to strengthen national data collection and analysis systems, including national statistical offices. Household surveys are beginning to include a broader range of indicators on “emerging areas,” such as violence within the home, data collection systems in areas like social welfare, the administration of justice and law enforcement are being modified to collect more data on child rights and surveys of children themselves are being used to enhance understanding on neglected areas.

The research conducted so far suggests three main areas of future action:

___ First, it is urgent to fill existing data gaps on issues such as the prevalence of violence against children and the magnitude of child poverty.

___ Second, a greater effort needs to be made to evaluate the impact of policies and budgetary decisions on children, in order to be able to identify and introduce any modifications that may be needed.

___ Third, it is essential to associate children with initiatives designed to monitor implementation of their rights. Some countries have carried out opinion polls with young people. The lessons learnt from these and similar experiences need to be disseminated more widely and activities of this kind need to be developed more systematically on the national, regional and local level. Listening to the views and experiences of children will enrich the results of monitoring

and lead to more holistic analysis and reporting on the situation of child rights. Furthermore, it is an imperative if the implementation of the CRC – including the right of children to participate – is to be taken seriously.

Conclusion

The CRC was adopted the same year that marked the beginning of the process of the reunification of Europe. Was this an accident of history? Or can these two events be seen as part of globalization, in the sense of the global acceptance of human rights values?

Whatever the answer to that question is, the coincidence of these two historic events serves as a reminder of the interrelationship between the contemporary understanding of child rights – so profoundly different from that prevalent in 1959 when the Declaration on the Rights of the Child was adopted – and democracy, the value that defines modern Europe.

The right of the child to be heard in all matters concerning him or her lies at the heart of the CRC. By taking this principle to heart and respecting it in the way children interact with their family, schools, communities, society and the State, we are not only honouring the commitments we have made when ratifying the CRC, we are educating children in the true meaning of democracy and ensuring the continued consolidation of democratic institutions across all regions of the world.

**General Measures of Implementation of
the Convention on the Rights of the Child**

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- 1 The ILO Convention 182 on the worst forms of child labour, and the Hague Convention on the Protection of Children and Cooperation in

respect of Inter-Country Adoption are two significant illustrations.

- 2 See the UNICEF Innocenti Research Centre publication issued together with the Committee on the Rights of the Child providing a compilation of the General Comments and the Committee's Concluding Observations on States Parties reports.
- 3 General Comment no. 5, November 2003.
- 4 See *A World Fit for Children* paragraph 31, adopted by the UN General Assembly at the twenty-seventh special session, 10 May 2002.
- 5 Article 28 of the Constitution of South Africa.
- 6 Civil Code article 1247 amended – "(1) Parental authority includes the duty and the right of the parent to care for and raise his or her minor child; (2) caring for and raising one's child includes the care and responsibility for the emotional and physical well-being of the child and for his or her safety, as well as for the development of his or her personality. In the care and upbringing of the child, the parents will not use emotional or physical violence or any other humiliating treatment."
- 7 See *A World Fit for Children*, paragraph 31.
- 8 For example, in Germany the Ministry for Family Affairs, Senior Citizens, Women and Youth, and in Norway the Minister for Children and Family Affairs.
- 9 The Netherlands illustrate this approach with the appointment of a Youth Commissioner.
- 10 As is the case in Spain.
- 11 Ukraine established an interdepartmental commission on children presided by the Deputy Prime Minister.

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Marta Santos Pais took up her post as Director of the UNICEF Innocenti Research Centre in July 2001. From 1997 until then she was the Director of UNICEF's Division of Evaluation, Policy and Planning. With thirty years of experience in human rights



law, she was a member of the UN Drafting Group of the 1989 Convention on the Rights of the Child and, more recently, its two Optional Protocols. She participated in the development of a number of other international human rights standards, including The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms; The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; Protocol aiming at the abolition of the death penalty; Declaration on the Protection of All Persons from Enforced Disappearances; Statute of the International Criminal Court. Prior to joining UNICEF, Marta Santos Pais was Rapporteur of the United Nations Committee on the Rights of the Child and a Special Adviser to the Machel Study on the Impact of Armed Conflict on Children. In Portugal, she was Senior Legal Adviser for human rights in the Comparative Law Office and member of the Portuguese Commission for the Promotion of Human Rights and Equality. She is the author

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