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The U.N. Convention on the Rights of the Child: Some Observations on the Monitoring and the Social Context of its Implementation

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ESSAY

THE U.N. CONVENTION ON THE RIGHTS OF THE CHILD: SOME OBSERVATIONS ON THE MONITORING AND THE SOCIAL CONTEXT OF ITS IMPLEMENTATION

*Jaap E. Doek**

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I. INTRODUCTION

The U.N. Convention on the Rights of the Child (CRC)¹ is one of the most — if not *the* most interesting of the six U.N. human rights treaties. The monitoring of its implementation is much more than just a legal-technical matter of measuring compliance of the state party with the provisions of that treaty. Implementation also takes place in quite different social contexts. This Essay is meant to inform the reader about the monitoring process and some aspects of the social context in which the implementation takes place. The observations in this regard are not meant to be exhaustive, but hopefully they will spark discussion in those very powerful states which have not yet ratified this very important convention.

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1. Convention on the Rights of the Child, G.A. Res. 52/107, U.N. GAOR (1997) [hereinafter CRC].

II. SOME CHARACTERISTICS OF THE CRC

The CRC is the youngest of the six human rights treaties and the most successful one. It was adopted by the U.N. General Assembly on November 20, 1989 and entered into force on September 2, 1990.² In just a little more than 2 years it was ratified by 100 state parties,³ and reached the current 191 state parties by 1997. Older treaties have far fewer signatories. For example, the Convention on the Elimination of Discrimination against Women⁴ adopted in 1979 has 162 state parties, and the Convention on the Elimination of Racial Discrimination adopted in 1965 has 151 state parties.⁵

The CRC is the only treaty that has been nearly universally ratified. There are only three member states that have not ratified it yet: East Timor, which became independent in May 2002 and is about to ratify the CRC as the first human rights treaty it will join; Somalia, which cannot ratify the CRC because it does not yet have an internationally recognized government, but nonetheless signed it in May 2002 as an indication of its willingness to ratify it; and the United States, which signed the CRC in 1995 but has not yet shown any further willingness to ratify it. However, in December 2002, the United States *did* ratify the Protocol on Children in Armed Conflicts⁶ and the Protocol on the Sale of Children, Child Prostitution, and Child Pornography,⁷ which were both optional protocols. The CRC standards and provisions have been strengthened by these two optional protocols, which entered into force in January and February 2002

2. *Id.*

3. For the human rights treaties it took ten years (e.g., Convention on the Elimination of Discrimination Against Women) or more, even up to fifteen years (e.g., International Covenant on Civil and Political Rights) before they reached 100 ratifications. Convention on the Elimination of All Forms of Discrimination Against Women, available at <http://www.hrweb.org/legal/cdw.html> (last visited Apr. 2, 2003) [hereinafter CEDAW]; International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

4. CEDAW, *supra* note 3.

5. International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106 (XX), U.N. GAOR (1965). The other numbers of ratifications are: 140 for the International Covenant on Civil and Political Rights, 138 for the International Covenant on Economic, Social, and Cultural Rights, and 110 for the Convention Against Torture. ICCPR, *supra* note 3; International Covenant on Economic, Social, and Cultural Rights, G.A. Res. 2200A (XXI), U.N. GAOR (1966) [hereinafter ICESCR]; Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, G.A. Res. 39/46 of 10, U.N. GAOR (1984).

6. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, U.N. GAOR, U.N. Doc. A/RES/54/263 (2000) [hereinafter Protocol].

7. *Id.*

(now each with 42 ratifications). Within two years, the United States must report to the CRC Committee on their implementation.⁸

The CRC is a most comprehensive human rights treaty because it contains classic, civil, political, economic, social, and cultural rights. Many of these rights can also be found in existing human rights treaties, such as the International Covenant on Civil and Political Rights (ICCPR)⁹ and the International Covenant on Economic, Social, and Cultural Rights (ICESCR).¹⁰ But these rights are much more specific and elaborate in the CRC, which also contains quite a number of provisions that cannot be found in other treaties.¹¹

III. MONITORING THE CRC¹²

Like the other human rights treaties, a special committee has been established for the purpose of examining the progress made by state parties in achieving the obligations undertaken in the CRC.¹³ This monitoring body, the CRC Committee, is composed of ten members elected by the state parties. It is likely that the CRC Committee will expand to eighteen members during the next round of elections in February 2003. An amendment in this regard to Article 43 of the CRC was approved by the U.N. General Assembly in December 1995¹⁴ and requires formal acceptance by two-thirds of the 191 state parties to take effect.¹⁵ If, as

8. It goes beyond the scope of this Essay to elaborate on the failure of the United States, a country so proud of its international human rights compliance, to ratify the CRC. At the 14th Congress of the International Society for the Prevention of Child Abuse and Neglect in Denver (July 2002), Don Bross (legal advisor of the Kempe Children's Rights Center in Denver) defended the position of the United States, and I explained why the United States can and should ratify the CRC. For the text of these presentations contact ISPCAN, available at <http://www.kempecenter.org/2001/ispcan/speakers.htm> (last visited Feb. 24, 2003).

9. ICCPR, *supra* note 3.

10. ICESCR, *supra* note 5.

11. Convention on the Rights of the Child, U.N. GAOR, 61st plen. mtg., A/RES/44/25 (1989) [hereinafter CRC plen. mtg.]; *see, e.g.*, art. 3 (the principle of the best interest); *id.* art. 9 (non-separation from parents); *id.* art. 12 (right to be heard); *id.* arts. 5, 18 (responsibilities of parents); *id.* art. 19 (on child abuse and neglect); *id.* art. 20 (on alternative care); *id.* art. 21 (on adoption), *id.* art. 23 (on disabled children); *id.* arts. 33-36 (on sexual and other forms of exploitation); *id.* art. 40 (on administration of juvenile justice).

12. *See* Gerison Lansdown, *The Reporting Process under the Convention on the Rights of the Child*, in *THE FUTURE OF U.N. HUMAN RIGHTS TREATY MONITORING* 113-28 (Philip Alston & James Crawford eds., 2000).

13. CRC, *supra* note 1, art. I(3).

14. *Id.*

15. *Id.* art. I(1).

expected, this expansion does indeed happen, the CRC Committee will start its work as an eighteen-member committee in May 2003. This will most likely entail a change of many of its working methods. Since the beginning of its work in 1993, the CRC Committee has received 173 initial, 69 secondary, and 3 third periodic reports (a total of 245 reports, of which about 195 have been examined). The CRC Committee meets with delegations of the state parties three times per year for four-week sessions in Geneva to review and discuss with delegations of the state parties the reports they have submitted.

State parties submit to the CRC Committee reports on the measures they have adopted that give effect to the rights recognized in the CRC, and on the progress made on the enjoyment of these rights. Each state party must submit its initial report within two years after the CRC enters into force in its jurisdiction; thereafter, the state party reports every 5 years.¹⁶

The CRC Committee also issues guidelines for initial and periodic reporting.¹⁷ What follows are some observations concerning the reporting process, which is the first and crucial step of the monitoring of the CRC's implementation.

In order to fully cover the wide range of topics in the CRC, it is crucial that the state party involve all relevant ministries and other governmental bodies in providing information for the report. This means that civil servants in various ministries such as health, education, justice, social affairs, family affairs, defense, and finance must collect information on relevant policies and programs, and statistical data with the necessary explanation and analysis. The result of this cooperation is a growing awareness of the CRC throughout governments; many governmental employees find themselves studying the CRC and the consequences of its ratification by the state party, which means reporting is a learning experience for many.

In order to produce a coherent and comprehensive report, one governmental body should have the final coordinating/drafting responsibility. This task is usually, but not necessarily, given to the ministry of foreign affairs (one can think of a cabinet member explicitly in charge of the coordination of all activities related to the implementation of the CRC, including making reports to the CRC Committee).

16. U.N. GAOR CRC Comm., 13th Sess. 343d mtg. at 1, U.N. Doc. CRC/C/58 (1996) [hereinafter Guidelines].

17. *See id.*

Such coordination becomes even more necessary in state parties with a federal structure.¹⁸ It is not easy for those state parties to produce a report that fully reflects what happens in their autonomous provinces, cantons, or devolved entities. It is a challenge to provide integrated and coherent information on the various clusters¹⁹ the CRC Committee uses in its reviewing process.²⁰ But the reporting requirements for state parties under federal structures have not proven to be a compelling reason for not ratifying the CRC in spite of the need to limit the length of periodic reports (for example, it is not advisable to submit one national report with reports from each of the provinces as annexes, because sometimes provinces do not share a common language and translations are costly).²¹

It is in this regard necessary to emphasize that the national/federal government is ultimately responsible for the shortcomings in the implementation of the CRC in relatively autonomous areas in its jurisdiction. A government cannot excuse itself from providing information on these areas. The CRC Committee understands that a federal structure poses some difficulties, but serious disparities in the treatment of children in the provinces should nonetheless be diminished or eliminated. The federal government should ensure that each child within its jurisdiction can enjoy the rights set forth in the CRC without any form of discrimination.

In addition to the state parties' reports, the CRC Committee receives reports from international non-governmental organizations (NGOs) and U.N. bodies (in particular, the U.N. International Children's Emergency Fund). These reports, encouraged by the CRC Committee, are often important additions to the reports of the state parties because they provide information on the day-to-day implementation of the CRC for different groups of children.²²

These reports are discussed with representatives of NGOs and U.N. agencies in the Pre-Sessional Working Group meetings during the last week of each of the four-week sessions of the CRC Committee, and about

18. *E.g.*, Germany, Spain, Switzerland, the United Kingdom and its devolved administrations, and Canada.

19. The content of the CRC, for reporting purposes, is divided into 8 clusters as follows: the General Measures of Implementation; Definition of the Child; General Principles; Civil Rights and Freedoms; Family Environment and Alternative Care; Health and Social Welfare; Education, Leisure and Cultural Activities; and Special Protection Measures.

20. *See* Guidelines, *supra* note 16.

21. In a recent recommendation the CRC Committee asked the state parties to submit periodic reports which do not exceed 120 pages.

22. *E.g.*, working children, refugee children, disabled children, children in institutions, and juvenile delinquents.

three months before the CRC Committee meets with the delegation from the state party. The meetings are held in private allowing those representatives to speak freely and provide the CRC Committee with full information. The result of this meeting is a list of additional questions or issues that is sent to the government with a request to answer them about three weeks before the scheduled meeting with the CRC Committee.

The second stage in the monitoring process is the examination by the CRC Committee of the progress made by the state party. The CRC Committee appoints a Country Rapporteur (CP) for each of the state parties for which a report is examined. With the support of the Secretariat, the CP is already active at the Pre-Sessional Working Group meeting, preparing a list of additional questions or issues. The examination of the progress made takes place in the form of a dialogue (one full day for six hours) between the CRC Committee and the delegation of the state party. The CP takes the lead in this process with an opening statement followed by questions on each of the clusters by the CP and CRC Committee members. The result of this dialogue is a set of concluding observations with recommendations for further action by the state party. This document is prepared by the Secretariat and the CP, discussed, and adopted by the CRC Committee in private meetings.

The last, but not the least, important part of the monitoring process is the follow-up the state party gives concerning the recommendations of the CRC Committee. State parties may ignore them and the CRC Committee cannot sanction the state. The CRC Committee has to rely on the genuine and honest commitment of the state parties to the CRC and a full implementation of those rights for their children. Cynical observers may think that state parties have an easy ride and that they simply ignore the recommendations they do not like—but these observers are wrong. NGOs and U.N. agencies involved in the reporting process, as well as others, usually take good note of the recommendations. They use them to raise awareness, and to put pressure on the government via parliament, the media, and other channels to undertake the necessary actions for implementation of the recommendations. There are many examples of successful actions in this regard. It is also clear, however, that a more elaborate and consistent policy is needed for an effective follow-up that does not depend too much on various circumstances, opportunities, and the lack of, or strength of, the NGOs.

Monitoring the implementation of the CRC is a complex process and although the CRC Committee is an important factor in it, it is not the only one. The effectiveness of the monitoring also depends on a genuine willingness of the state parties themselves to respect and ensure the rights of the child and the involvement of active and effective NGOs, U.N.

agencies, and individuals. In particular, children themselves and their parents must be involved. The creation of a world fit for children is everyone's responsibility.

IV. THE SOCIAL CONTEXT OF THE IMPLEMENTATION OF THE CRC

A. Some Introductory Observations

When the CRC Committee reviews the report submitted by a state party, it must take into account various country-specific aspects of the implementation of the CRC; or in other words, the social context in which the CRC is implemented. It goes almost without saying that the CRC Committee has to be aware of the very difficult socioeconomic conditions in the country under consideration. There is a difference between a highly developed country, like the Netherlands, and very poor countries like Haiti, Burkina Faso, or Zambia. Equally important are the social and cultural differences that exist between them (e.g., between the countries in Africa, Asia, and Latin America). I would like to briefly elaborate on the social context of the implementation of the CRC, and make a distinction between socioeconomic conditions on the one hand, and social, cultural, and traditional values on the other.

B. Socioeconomic Conditions

Six-hundred million children have to live — that is have to be housed, clothed, fed, and educated — with less than one U.S. dollar a day. One of every four babies is born in extreme poverty. The wealthiest 20% in this world are 82 times better off than the poorest 20% and account for about 88% of the consumption of goods and resources.²³ By 2001, in the nine African countries most affected by HIV/AIDS, twenty percent of the children will be AIDS orphans.²⁴

Obviously, the implementation of the CRC is very much affected by poor socioeconomic conditions. This results in a lack of adequate

23. JO BOYDEN & DEBORAH LEVISON, CHILDREN AS ECONOMIC AND SOCIAL ACTORS IN THE DEVELOPMENT PROCESS I (Expert Group on Dev. Issues, Working Paper No. 2000:1, 2000).

24. See Report of the Secretary-General, *We the Children: End-Decade Review of the Follow-Up to the World Summit for Children*, 27th Special Sess., U.N. Doc. A/5-2713 (2002) (giving more details on socioeconomic conditions affecting, inter alia, the right to healthcare and education of children).

healthcare²⁵ and lack of access to, or the equality of, primary education.²⁶ But it also entails many other serious problems that may result in other violations of the rights of children. In many countries the law expects teenagers to go to school rather than to work, but the practical effect of a chronic shortage of school places and of employment is that many drift into idleness, begging, informal street work, prostitution, or crime. Society is often quick to respond by condemning these children for engaging in anti-social or illicit activities.

The wheels of juvenile justice that are set in motion regularly produce more violations of the rights of children. The Reports of the Special Rapporteur on Torture show that many children have been subjected to lengthy periods of pretrial detention in conditions that are particularly conducive to torture and physical, sexual, and psychological abuse. Notably, street children have been targeted for torture and abuse by police units. Many incidents of social cleansing (i.e., cleaning the streets of such children) have been reported.²⁷

This incomplete description of socioeconomic conditions is, however, enough to conclude that poverty is the major obstacle to a minimal enjoyment of the rights enshrined in the CRC for hundreds of millions of children. Therefore, the eradication of poverty is the short answer to the question of how the implementation of the rights of children can be improved; but the long answer involves a restructuring of the macroeconomic conditions of the world.

The stabilization measures and structural adjustment policies set as conditions by the IMF and the World Bank for their financial support of highly indebted countries may make sense in macroeconomic terms, but often increase the deprivation of the poor. For example, correctly setting the price for food has serious implications for the nutritional status of poor children. Social safety nets are necessary to prevent the negative impact of the liberalization of the economy. This negative impact is very evident in Central and East European countries and in Central Asian countries. Children cannot adjust to reduced opportunities in education, nutrition, and healthcare.²⁸ The World Bank and the IMF have the power to insist on

25. CRC plen. mtg., *supra* note 11, art. 24.

26. *Id.* art. 28.

27. Report of the Special Rapporteur, Mr. Nigel S. Rodley, U.N. GAOR, Comm. on Human Rights, 52d Sess., U.N. Doc. E/CN.4/1996/35 (1996).

28. KARINE LIMON & CYRILLE JAMAIN, *THE RIGHTS OF THE CHILD IN DEVELOPING COUNTRIES AND CEEC (CENTRAL-EAST EUROPEAN COUNTRIES) WITHIN THE POLICY OF THE EUROPEAN UNION* (2000).

social safety net programs and their member states and governing boards need to mandate that they use this power effectively.

Many macroeconomic measures are necessary, in particular via the WTO. At the same time, it has to be said that evidence supporting criticism of macroeconomic policies is not overwhelming. More systematic research is needed to collect and analyze detailed information on families and individuals in order to capture their ramifications.²⁹

C. Social, Cultural, and Traditional Values

Examination of state parties' reports also shows that social, cultural, and traditional values, to a large degree, influence the realization of children's rights. In this regard, references are often made to harmful traditional, and sometimes religiously justified practices such as child marriages (e.g., in India the marriage of young females to a temple god). In particular, they are a violation of the rights of young girls to a healthy development. Young females are often forced into marriages that may result in early pregnancies. Other serious violations of the rights of children are the traditional practice of female genital mutilation and the infanticide of female or handicapped babies.

There are other less visible, but perhaps equally important differences as a result of social and cultural values. The low social status of women (and therefore, of girls) hampers the full enjoyment of their rights in many countries. Infanticide of female babies may be the most extreme manifestation of this. Other consequences can be found in the area of education³⁰ and the labor market. Girls often start work before boys; and in many countries, girls are expected to work in a wider range of tasks (e.g., caring for younger siblings, domestic/household chores, and paid work outside the home, in addition to attending school). We also find that girls work more hours than boys. This has to do with fundamental differences in opinions about childhood, and the way that people view the child and his or her capacities.

A division between the industrialized countries, which may see the child as a bearer of rights and as a person with the growing capacity to participate in decision-making processes, and those countries (mostly in developing parts of the world) where these (progressive) views may not

29. BOYDEN & LEVISON, *supra* note 23.

30. There are lower enrollment and completion rates for girls than for boys in the area of education, often more so in secondary education; but there are countries, such as some in the Caribbean, Africa, and Latin America, where girls do better than boys.

exist is far too simple. In countries where the right to be heard³¹ is widely and effectively implemented, the views of the child are not always given due weight. At the same time, it is true that participation of children in decision-making processes (e.g., via school councils, local or national parliaments/councils) does exist in both developed and developing countries. Regardless of this (limited) recognition of the right of the child to be heard and to participate, the closer to home, the more difficult it seems to recognize the child as a human being with rights.

Violence against children by parents or other caretakers is a worldwide phenomenon. It is not only the desire to discipline children that lies behind this violence, but also sexual abuse. The fact that corporal punishment is widely accepted or condoned is an indication of the lack of respect for the physical and psychological integrity of children. It also results in a climate in which other more moderate forms of violence in institutions, detention centers, the workplace, and on the street are not addressed as seriously and systematically as is necessary.

Behind the participatory³² rights of children is the concept of their evolving or growing capacities.³³ What this concept specifically means for a child and for the independent exercise of his or her rights in the area of reproductive healthcare (e.g., abortion and euthanasia to mention some of the more sensitive issues in this regard) cannot be found in the CRC. However, it should be noted that in countries where this concept is given no attention in the law or in the implementation of the rights of children, evolving capacities are recognized *de facto*. Working children not only assume certain responsibilities (e.g., the girl taking care of younger siblings), but also contribute to the family income. This can give them some influence and bargaining power in household decision-making. This is a natural competence that is perhaps more developed at a younger age in developing parts of the world than in the industrialized countries.

More can be said about the effects of the social, cultural, and traditional values on the implementation of the rights of children. However, allow me to conclude with some observations concerning possible measures. Education is the primary key to address harmful social, cultural, or traditional practices. In addition, specific preventive measures are necessary — as well as treatment, rehabilitation, and reintegration for the victims of such practices. However, we have to be careful.

First, punitive measures may be seen as an integral part of the enforcement of laws, but the application of such measures may run into

31. CRC plen. mtg., *supra* note 11, art. 12.

32. The word "participation" in reference to children is not in the CRC.

33. CRC plen. mtg., *supra* note 11, arts. 5, 14.

problems. For example, in India there is discussion of an amendment to the constitution regarding the introduction of *compulsory* and free primary education because some opposition groups fear that this provision may be used to punish poor parents, who do not send their children to school. Second, the concept of evolving capacities may lead to different conclusions in different cultures. It may be quite acceptable in Western culture that adolescents make independent choices (e.g., in the area of healthcare), but this may not be as easily applicable in other cultures. The competence of adolescents is a concept that may have different meanings in different cultures.

D. *A Child-Centered Approach*

Finally, I would like to make some observations about a child-centered approach concerning issues previously discussed. First, it is necessary to foster and promote a culture of childhood throughout society that is based on the principles of the CRC, and thereby guarantee that children have a higher priority in social and economic planning and in family and community life. If macro- and microeconomic measures are to contribute to the development of healthy children, it is necessary that they recognize and take into account the key determinants of their well-being. These key factors are loving care and family loyalty, food, clothing, housing, education, challenging tasks, and relevant skills and competence.

More systematic research is necessary into support of this approach, in order to gain a better insight in the weight of these and other determinants and their interrelationship. This will allow us to develop economic models or theories of which these determinants are an integral part. In this regard, one could also systematically collect and analyze data and other information on the impact of work on children, including the recognition of unpaid work performed by children as a valuable contribution to society, as well as the reconsideration of the value of education given the fact that its contribution to literacy, numeracy, life skills, and self-esteem is often very limited due to its low quality.

Second, children should be recognized as agents of change. New research findings suggest that children are often more competent than is commonly thought and that growing up without responsibility is not necessarily the most effective way to promote their well-being. At the same time, children should not be expected to assume responsibility for situations over which they have no control or do not fully understand. Children often do have sound ideas about their problems and needs, as well as their possible solutions. Often, they are better able to protect

themselves when provided with proper information and with some role in the decisions and processes affecting them.

This method of child participation in social, political, or economic planning and decision-making is already practiced in some countries. For example, in Colombia children are involved in the New Schools program. In Senegal members of the Working Children and Youth Union sit on the board of the National Programme to Eliminate the Exploitation of Children at Work. But again, much research and evaluation is needed to develop and strengthen this process of child participation. In order to address the various aspects of the social context in which the implementation of the CRC is needed, it is crucial to guarantee a child-centered approach, and this means the direct participation of children.

V. SOME FINAL OBSERVATIONS

The examination of the implementation of the CRC is a multifaceted process which involves many organizations, including the CRC Committee, which is the body with the responsibility of reviewing any progress made and providing the state parties with well-targeted recommendations for further actions. In drafting these recommendations, the CRC Committee has to take into account the social context in which the state parties are implementing the CRC, without compromising the full respect of all the rights enshrined in the CRC for all children — without any form of discrimination. It is a challenge that can only be met if the state parties to the CRC are fully committed to its progressive implementation.