THE CRC: A LEGALLY BINDING INSTRUMENT. OBLIGATIONS OF THE STATES PARTIES

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Presentation made in Belfast in 2013
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Introduction

- it is very clear from the theory of the human rights that the CRC belongs to the human rights family and that the principles which apply to all the international treaties regarding human rights and will apply in the same way to CRC
- One of the 9 core human rights instruments
- All these human rights treaties lay down obligations which States are bound to respect
- Through ratification, the State becomes a party to the treaty and commits itself to set up a certain number of measures
The CRC: obligations

• Rights enshrined in the CRC are more than a exhaustive list of rights; they enumerate the obligations States have towards children

• quasi universal ratification: 193 States have agreed to be bound with the same obligations towards all person under 18 years

• Art. 4 requires States to “...undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention....”
The CRC: obligations (2)

• with regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.”

• Some examples: Violence against children
  - Early and forced marriages, prejudicial to girls and women and largely utilized in different parts of the world... FMG, etc.
  - Institutionalization, responsibility of parents
Specific rights for children

• The CRC is a uniquely broad instrument, covering children’s civil, political and economic, social and cultural rights.

• Some articles in the Convention mirror guarantees established for “everyone” in the International Covenants or other instruments, underlining that these rights apply equally to children.

• But many other provisions in the Convention provide unique rights for children
Some specific rights

• Obligation to protect the child from all forms of discrimination (2)
• Obligation to respect the right of the child to have his/her best interests taken as a primary consideration in all actions (3(1))
• Obligation to respect the principle of evolving capacities (5)
• Obligation to ensure maximum survival and development of the child (6)
• Obligation to respect the right to be heard (12)
Limitations, Reservations

• Derogations of human rights allow States parties to adjust their treaty obligations in exceptional circumstances.

• Various lists of rights that cannot be derogated can be found in the international conventions on human rights. The Convention on the Rights of the Child does not contain such a list.

• For all international agreements, there is the possibility for the State to make reservations regarding certain provisions.
Reservations and declarations

8. The Committee, while welcoming the announced withdrawal of the reservations under articles 22 and 37 (c) of the CRC, regrets that the State party maintains its reservation with regard to the applicability of art. 32 to its Overseas Territories and Crown Dependencies.

9. The Committee encourages the State party to withdraw its reservation to art 32 with respect to the Overseas Territories and Crown Dependencies.
The obligation to respect, protect and fulfil

- States are the **duty-bearers** under international human rights law; **only States** assume direct obligations in relation to human rights
- States' obligations may be classified in **three categories**: to respect, to protect and to fulfill.
- Obligation to fulfill includes an **obligation to facilitate** and an obligation to provide
- This classification has been endorsed by the CESCR in its GC 12, as **well as by a great number of GC of the CRC Committee**
“obligation to respect”

• The State “obligation to respect” means that the State is obliged to refrain from interfering directly or indirectly to the enjoyment of rights. It entails the prohibition of certain acts by Governments that may undermine the enjoyment of rights.

• Such obligations are sometimes also called negative obligations, since they tell States what they must not do, for example use the violence, recruit children in armed conflict or tolerate harmful practices, conduct unfair trials.
CRC in GC Nr. 16 " On State obligations regarding the impact of business sector on children’s rights:

- The **obligation to respect means** that States should not directly or indirectly facilitate, aid and abet any infringement of children’s rights. Furthermore, States have the obligation to ensure that all actors respect children rights, including in the context of business activities and operations...

- **also implies that a State should not engage in, support or condone abuses of children’s rights when it has a business role itself**
The “obligation to protect” requires States to protect individuals against abuses by non-State actors. In short, States have to take positive action.

With regard to, States have to ensure:

- that children are not prevented from attending school (for example, by their parents) and
- prevent children from being victims of corporal punishment or other forms of violence by their parents or caregivers
Example

CRC in GC Nr. 16: On State obligations regarding the impact of business sector on children’s rights

“States have an obligation to protect against infringements of rights guaranteed under the CRC..., by third parties. This duty is of primary importance when considering States' obligations with regards to the business sector. It means that States must take all necessary, appropriate and reasonable measures to prevent business enterprises from causing or contributing to abuses of children’s rights.
Under the “obligation to fulfill”, States are required to take positive action to ensure that human rights can be exercised. This is another positive obligation of States to implement human rights.

This obligation requires appropriate measures be taken to make sure that the human rights standard is attained.
CRC GC 15 The right of the child the highest attainable standard of health (art. 24)

All States,... are required to take immediate action to implement these obligations as a matter of priority and without discrimination of any kind. Where the available resources are demonstrably inadequate, States are still required to undertake targeted measures to move as expeditiously and effectively as possible towards the full realization of the child’s right to health
Progressive realization

• The principle of progressive realization applies to the positive State obligations to fulfill and to protect. **Progressive realization means that governments should establish targets and benchmarks in order to measure the progressive achievement of these goals**

• Example drawn from **GC No. 17 on article 31**: the right of the child to rest, leisure, play, recreational activities, cultural life and the arts
« While the Convention provides for ‘progressive realisation’ of economic, social and cultural rights, and recognises the problems arising from limited resources, it imposes on States Parties the specific and continuing obligation, even where resources are inadequate, to ‘strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances.’ No regressive measures in relation to the article 31 rights are permitted.” (para 56)
The very notion of rights entails, in addition to a substantive claim, the possibility to have recourse to a national — judicial, administrative, legislative or other — authority in the event that a right is violated.

The justiciability of rights, the ability to claim rights through judicial means, is the basis for redress of violations.

To children, this means that SP must ensure that there are effective, child-sensitive procedures available to children and their representatives.
• “Meeting this obligation entails having in place child-sensitive mechanisms - criminal, civil or administrative - that are known by children and their representatives, are prompt, genuinely available and accessible and provide adequate reparation for harm suffered.

• Agencies with oversight powers relevant to children’s rights... .... as environmental tribunals, taxation authorities, NHRI and bodies focusing on equality in the business sector can also play a role in the provision of remedies...”
Recourse to a supranational Court

• The right to have recourse to an international human rights court once all avenues of seeking redress at the domestic level have been exhausted has been accepted, however not in all parts of the world and not in relation to all kinds of rights

• The introduction of a new optional protocol to allow for an individual complaints procedure is an important improvement in the international protection of children’s rights (OPIC), 2011
Reparations, Rehabilitation and Recovery

- The right to an effective remedy implies a right to reparations for the harm suffered. The obligation of States Parties entails, *inter alia*:
  - bringing to justice those responsible for the violation, including public officials/State agents,
  - offering to child victims the possibilities of recovery and rehabilitation (art. 39 CRC)
  - adopting measures to protect the child victims in criminal proceedings,
  - taking measures to prevent the recurrence of violations.
General Measures of Implementation

- CRC does not provide a definition of measures of implementation that a State Party must take.
- Both of the International Covenants include an article similar to Article 4 of the CRC which establish overall implementation obligations to take “all appropriate legislative, administrative and other measures.”
- The task of implementation – of making the human rights of children a reality – needs to engage all sectors of society, including children.
Legislative Measures

- States Parties shall ensure that national laws, including any local or customary laws, are fully compatible with the CRC.
- SP should undertake a systematic review of domestic legislation, practices and related administrative guidelines to ensure full conformity with provisions of the CRC.
- The review needs to consider the CRC not only article by article, but also holistically: interdependence and indivisibility of Human Rights.
11. The Committee recommends that the State party continue to take measures to bring its legislation into line with the Convention. To this aim, the State party could take the opportunity given in this regard by the development of a Bill of Rights in Northern Ireland and a British Bill of Rights, and incorporate into them the principles and provisions of the Convention, e.g. by having a special section in these bills devoted to child rights.
Administrative Measures

Coordination

• Put in place an intersectorial coordination to ensure that all Ministries, Offices, and Services apply different rights in a concerted manner.

• This coordination should also be implemented in cooperation with civil society, and where possible, with children themselves.

• But also vertical coordination between the central, regional and municipal authorities: children live at the local level...
13. The Committee reiterates its previous recommendation that the SP ensure effective coordination of the implementation of the Convention throughout the SP, including locally, especially where local authorities have significant powers to determine their priorities and allocate budgets. To this end, the SP... could allocate responsibility for the coordination and evaluation of the Convention across the State party to a single, high-profile mechanism.
Strategy for Children

• The result of coordinated action provides an opportunity for a government to build an effective policy for children’s rights, programmes, actions of prevention and protection services and a national and global strategy to implement the CRC.

• Committee asks SP to develop a national and global policy reflecting the implementation of the CRC, and not only its different provisions. This global policy has a name: A National or Global or Comprehensive Strategy, Materialized in a National Plan of Action.
15. The Committee encourages the State party to adopt comprehensive plans of action for the implementation of the Convention in all parts of the State party, in cooperation with the public and private sectors involved in the promotion and protection of children’s rights and based on a child right approach... ensure adequate budget allocations and follow-up and evaluation mechanisms for the full implementation of the plans of action to regularly assess progress achieved...
Resources for Children

- to implement the rights enshrined in the Convention, children must be made visible in budgets, and States parties must allocate adequate resources for children.
- The Committee has emphasized that the obligations of States parties to implement economic, social and cultural rights “to the maximum extent of their available resources” implies the importance of an effective budgetary analysis.
- The crisis!
19. The Committee recommends that the State party, in accordance with article 4 of the Convention, allocate the maximum extent of available resources for the implementation of children’s rights, with a special focus on eradicating poverty and that it reduce inequalities across all jurisdictions...Child rights impact assessment should ...evaluate how the allocation of budget is proportionate to the realization of policy developments and the implementation of legislation
The new Status of the Child

- Article 2: the right of the child not to be discriminated against;
- Article 3 (1): the right to have her/his best interests taken as a primary consideration;
- Article 6: the right to life, survival and development; and
- Article 12: the right of the child to be heard.

For me, these rights are the expression of the new status of the child as a rights holder
The new Status of the Child

- I believe that these four articles constitute the "core" of the CRC.
- SP have the primary obligation to recognize the new status of the child and therefore must refrain from limiting the possible enjoyment of the substantive rights by children both in direct actions or when undertaken by their representatives.
- They are obliged to protect this new status and take positive action to promote the child as a rights holder.
The new Status of the Child (3)

- If we apply these **four provisions in accordance with the age, maturity and evolving capacities of the child** we recognize that it is impossible
- to fully implement any specific State Party obligations under the CRC (specifically substantive rights) without
- first examining the **question of fair treatment**, listening to the child’s views in order to determine her/his best interests and
- finally, **aiming for harmonious and holistic development**
Conclusion

Steps involved to determine if a SP to the CRC ensures the enjoyment of children rights

1. to look at what the SP has done to respect the rights of the child, (not restricting the scope of the rights and manifesting a political will to refer to the CRC)

2. to determine if the SP has taken positive action to promote the CRC, facilitate the knowledge, raise awareness among the public at large and train all relevant stakeholders (including parents and caregivers).
Conclusion (2)

3. to evaluate the measures of implementation at the different levels of the government, particularly in the administration and the judiciary, determine the availability of funds and infrastructure and the degree of coordination between the diverse actors.

4. if there are breaches of State party obligations, ensure that children have access to remedies, redress, recovery and rehabilitation.