

## Child rights fact sheet

Children's rights are about treating children with the equality, respect and dignity to which they are entitled, not because they are the “adults of tomorrow”, but because they are *human beings today*.

The aim of this factsheet is to clarify the meaning of child rights, and to challenge some of the popular arguments used to obstruct their implementation.

### Why child rights?

Children face particular exclusions and discrimination against which they have a right to full protection.

The fact that children are *not* adults, and the low social status afforded to them in most societies, means they may receive unfair treatment, or be left out of decision-making. For example, in almost every country children under 18 are denied political power because they cannot vote, and most countries allow parents to hit their children, even though they would be prosecuted for assault if they hit another adult. Children's status in society, among other factors, also means they are more vulnerable to sexual abuse and other forms of violence and exploitation.

There are therefore a number of rights in the Convention on the Rights of the Child (CRC) which apply especially to children. These include, for example, the obligation to consider their views, and limitations on the use of children in armed conflict. For more, see here:  
<http://www.crin.org/resources/infoDetail.asp?ID=19191&flag=news>

*“The CRC is a legal instrument - not a wish list where states can pick and choose which rights they give to children.”*  
- Peter Newell

### Child rights and human rights

Children's rights are human rights for children. Human rights are explained in a set of internationally agreed legal instruments, including the CRC. This treaty is the most ratified (agreed to) of all the instruments, and includes provisions on the right to health, the right to adequate housing, the right to be free from violence and the right to play.

The CRC is important because it emphasises that children are the subjects of rights, have individual identities, and have voices that must be listened to and given due weight. It establishes a direct relationship between a child and the State.

*“Children do not constitute anyone's property: they are neither the property of their parents nor even of society. They belong only to their own future freedom.” - M. Bakunin*

Human rights are governed by three core principles:

1. Rights are **universal** – they apply to every human being everywhere in the world, at all times. No political leader can say that human rights are not applicable in their country because it has a different culture or tradition. They are really saying they do not believe in them.
2. Rights **cannot be given up or taken away** (they are *inalienable*).
3. Rights **cannot be divided up** – they are like different parts of the same body. You cannot pick and choose which rights to respect. Denying some rights undermines others, for example, failing to provide protection

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from violence also violates the right to health.

## Our responsibility

States must **respect, protect and fulfil** rights. It is our responsibility as adults to help them do this.

The concept of rights goes much further than charity. It is not limited to the satisfaction of specific needs, or about the State doing favours for children. It is about them meeting legal obligations to respect all children's rights.

*"Too few resources are allocation to children, particularly in comparison with, for example, defence and security." - Dr Assefa Bequele*

## Myths about children's rights

- *"The CRC takes rights away from parents"*

Rights are not pieces of property which can be exchanged. If a child has a right, a right is not automatically removed from someone else.

The CRC places parents centre-stage in children's development. It recognises the family "as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children...", and acknowledges "that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love, and understanding" (Preamble).

The Convention repeatedly reinforces the integral role of parents. For example:

- Article 3 says: *States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her.*
- Article 5 says: *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*
- Article 18 says: *Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child.*
- Article 29 *requires respect for parents to be integrated into the education of the child.*

However, as Yakin Ertürk, former UN Special Rapporteur on Violence Against Women, argued: "We think that children are our property. They come from us, but they do not belong to us. They are in our trust temporarily."

Parental rights do not mean we can beat our children, exploit them, take decisions without reference to their views, or deny them rights to which they are entitled.

- *"Child rights erode the family unit"*

A related argument is that the concept of rights is 'individualistic' and 'self-interested', and therefore opposes family and social units. However, child rights and a close, sharing family are not different things - you do not have *either* rights *or* a strong family/community. Indeed, respecting and fulfilling a child's rights means *more* loving and close relationships, because the well being of that child is being nurtured, enabling him/her

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to form positive, loving communal ties.

Just because a child possesses rights, it does not mean that every dispute between children and parents/guardians will end up in a court of law. Nonetheless, the recognition of such rights, and the availability of legal remedies, is essential when relationships break down, especially in circumstances of violence or exploitation. Relying on love alone for a child's wellbeing does not ensure protection when family units erode.

- ***“Child rights are a Western concept and cannot apply to other cultures”***

While it has been argued that human rights are a ‘Western’ concept, based on a Western notion of law and legislature, representatives of many States in all regions assisted with its drafting. It was adopted unanimously by Member States of the UN in 1989, while all but two States (the US and Somalia) have signed and then ratified the CRC, and are therefore bound by its provisions (indeed, both the US and Somalia have signed the Convention, signifying an intention to ratify).

Those arguing that a particular State's law, culture or tradition disallows the full implementation of the the CRC are ignoring the legal obligations undertaken when the Convention was ratified.

Furthermore, Article 27 of the Vienna Convention on the Law of Treaties, considered binding on all States because it restates customary international law (i.e. law that is unwritten, but exists because most or all countries agree to abide by it), states: “A party [State] may not invoke the provisions of its internal law as justification for its failure to perform a treaty.” This means that domestic law cannot be used as an excuse for the breach of a State's obligations under international law.

- ***“Children have enough rights already. What about responsibilities?”***

Rights are unconditional, not earned or matched by responsibilities. Just because a child has a right, it does not mean they forgo a responsibility. It is not for us to decide how many rights a person can have. We cannot pick and choose the rights we feel children most *deserve*. Either a child's rights, as listed in the Convention on the Rights of the Child, are respected, fulfilled and protected, or they are not.

The rights of hundreds of millions of children are violated. They die early, or have their right to survival and development permanently warped by poverty, lack of food and clean water, and the denial of/discriminatory access to basic health services. They are recruited into armed forces, as well as physically, sexually and emotionally abused. Why do some children have plentiful access to the most nutritious food, the best education and free healthcare, while others die before their first birthday? While such extreme violations may find their way to the front pages, subtler forms of discrimination may be less evident. Why, for the vast majority of the world's children, is their right not to be assaulted ignored?

In reality, children rarely grow up without responsibility and indeed, many are burdened with a level of responsibility that is not in accordance with their maturity, such as child soldiers. However, we do all have responsibilities to respect each others' rights, and the respect of children's rights encourages children themselves to be more aware of the rights of others.

- ***“We don't need ‘extra’ rights for children”***

Some argue that if human rights apply to all human beings, then we do not need ‘special’ rights for children. While human rights do indeed apply to all, as mentioned above, children's developmental status and the particular exclusions and discrimination they face demand special provision.

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Children traditionally have been regarded as possessions of their parents, not individual people or rights holders. Children may be exposed to unfair, discriminatory treatment as a result of such societal views. This is why there are a number of rights in the Convention on the Rights of the Child (CRC) which apply especially to children and are not provided for in human rights law generally. These include specific rights to maximum survival and development, to education, to protection from sexual exploitation and abuse including child pornography, the right not only to express their views, but to have them given due weight in all matters concerning them, and the right to be detained only as a last resort. For more, visit: <http://www.crin.org/resources/infoDetail.asp?ID=19191&flag=news>

### **A note on enforcement**

There is as yet no international court to investigate breaches of children's rights only. Some say that this makes the CRC a flimsy tool, but this is a defeatist argument. States are required to incorporate the CRC within their own domestic law, and to ensure that all domestic law fully reflects and upholds the rights in the Convention, but it is very hard to force governments to do something. This is why we must all work hard to ensure governments are held accountable for their obligations. For example, most governments do not want to be embarrassed in public, such as before the Committee on the Rights of the Child, or at the Human Rights Council, because they have failed children. Civil society and others can submit reports, and sometimes make oral statements, both to the Committee and the Council.

*"A lot of people say that the practicality of attaining the rights in the CRC is too overwhelming. But from a child's point of view, it is impractical to be suffering. As soon as you start talking of it being overwhelming, you are making excuses."*  
*Shantha Sinha*

On a national level, given the traditional place of children in societies, it is hard to assert children's right to remedies when their rights are breached, including the right to go to court. But children's rights advocacy, while still in its infancy, is growing.

There is a range of other ways that children's rights can be enforced internationally. Other UN mechanisms, such as the 'Special Procedures' (human rights experts), investigate and report on child rights violations. Regional mechanisms, such as the Inter-American Commission and Court of Human Rights and the African Committee on the Rights and Welfare of the Child, also hold governments to account, while regional courts such as the European Court of Human Rights adjudicate on individual complaints of breaches of rights. And all these mechanisms now quote and use the CRC as the standard for the treatment of children.

*Note: A group of agencies are campaigning for the United Nations to establish a communications/complaints mechanism to the Convention on the Rights of the Child (CRC). Such a procedure would provide a mechanism that would ensure the availability of legal remedies for children at the international level. Read more here: [http://www.crin.org/law/CRC\\_complaints/](http://www.crin.org/law/CRC_complaints/)*

### **'Non-State actors'**

Although the enjoyment of human rights has historically been about the compliance of State governments with internationally-agreed instruments (indeed, only States can ratify the CRC), there is growing consideration of the role of other groups, such as global companies, civil society groups, armed opposition groups and international organisations.

A General Comment adopted by the Human Rights Committee (which monitors implementation of the Covenant on Civil and Political Rights) in 2004 (<http://www1.umn.edu/humanrts/gencomm/hrcom31.html>), spoke of the obligations on States to "address the activities of private persons or entities." It continues: "States Parties have to take positive measures to ensure that private persons or entities do not inflict torture or cruel, inhuman or degrading treatment or punishment on others within their power. In fields affecting basic aspects of ordinary life such as work or housing, individuals are to be protected from discrimination."

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Codes of conduct have been adopted by thousands of transnational corporations, but they vary hugely in their content and effect. Indeed, many have been criticised by NGOs for either their limited scope or inadequate implementation. The UN has appointed a Special Representative on the issue of human rights and transnational corporations. Read more about his work here:

[http://www2.ohchr.org/english/issues/trans\\_corporations/index.htm](http://www2.ohchr.org/english/issues/trans_corporations/index.htm).

In addition to corporations, some have argued that there is a shortage of international law in dealing with human rights abuses by armed opposition groups, although article four of the Optional Protocol to the CRC on the involvement of children in armed conflict states that, among other provisions, “[a]rmed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.” Many humanitarian law experts agree that human rights law does not just apply to governments. Of course, implementation is another challenge entirely.

## Other notes

- A ‘child’ is defined in the CRC as anyone under the age of 18, although national laws often have a different cut-off age, which means that states are not properly implementing the CRC. The Ibero-American Convention on Young People’s Rights safeguards the rights of 15 to 24 year-olds. <http://crin.org/resources/infoDetail.asp?ID=16822&flag=news>
- There is a difference between the rights someone has under law, by virtue of the CRC, and ‘moral’ rights which may not be strictly codified in law. However, a right can be both moral and legal.

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