



International Human Rights Law (4th edn)

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## p. 339 17. Children's Rights

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### Abstract

Centring on the Convention on the Rights of the Child (CRC) and the work of its treaty-monitoring body, the UN Committee on the Rights of the Child, this chapter addresses the key sources, developments, standards, and debates regarding international children's rights law. In tackling questions related to CRC rights, obligations, duty-bearers, jurisdiction, and limitations, the chapter makes clear the strengths and weaknesses of both the CRC and the enforcement mechanisms associated with that treaty. The chapter provides an in-depth discussion of the past record and future prospects of the CRC in terms of responding meaningfully to the diverse challenges faced by children.

**Keywords:** economic, social, and cultural rights, international human rights, children's rights, Convention on the Rights of the Child, CRC Committee, non-discrimination, best interests, right to life, survival and development, evolving capacity of the child, participation, right to be heard

### Summary

The last 30 years have seen the emergence of children as a discrete—and increasing—focus of international human rights law attention. Centring on the Convention on the Rights of the Child (CRC) and the work of its treaty-monitoring body, the UN Committee on the Rights of the Child, this chapter addresses the key sources, developments, standards, and debates regarding international children's rights law. In tackling questions related to CRC rights, obligations, duty-bearers, jurisdiction, and limitations, the chapter makes clear the strengths and weaknesses of both the CRC

and the enforcement mechanisms associated with that treaty. The chapter provides an in-depth discussion of the past record and future prospects of the CRC in terms of responding meaningfully to the diverse challenges faced by children.

## 1 Introduction

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The last 30 years have seen the emergence of children as a discrete—and increasing—focus of international human rights law attention. Much of this is attributable to the growing influence of the UN Convention on the Rights of the Child 1989, the most widely ratified of all human rights treaties.<sup>1</sup> However, it is also consistent with a broader trend within international human rights law to focus on the rights of particular groups of persons, both in terms of the development of group-specific treaties<sup>2</sup> as well as in the work of ‘general’ treaty bodies.

The CRC was adopted on 20 November 1989 and came into force the following September. It emerged from a ten-year drafting process,<sup>3</sup> initiated as part of the ↵ ‘International Year of the Child’ in 1979.<sup>4</sup> The key UN child rights instrument prior to the Convention was the Declaration of the Rights of the Child 1959,<sup>5</sup> which had updated, and expanded upon, the Declaration of the Rights of the Child adopted by the League of Nations in 1924.<sup>6</sup> However, these earlier instruments were very different to the CRC in terms of their scope and the extent to which they delineated explicit rights-based protections and obligations. The CRC was subsequently added to by three optional protocols: the Optional Protocols to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography 2000, on the involvement of children in armed conflict 2000, and on a communications procedure 2011.

Beyond the CRC, it is important to note that children’s rights have also been addressed by other UN human rights treaty bodies, with such references increasing as the profile of children’s rights as an area of international human rights law has grown. All seven of the non-child-specific UN treaty body complaints mechanisms have addressed complaints brought by children.<sup>7</sup> Two of the treaty bodies have issued joint general comments or recommendations with the CRC’s treaty-monitoring body, the UN Committee on the Rights of the Child (CRC Committee), on areas of overlap between their mandates.<sup>8</sup> Several others have produced sole-authored general comments with an extensive focus on children.<sup>9</sup>

Similarly, there is a growing body of child rights jurisprudence from regional human rights bodies.<sup>10</sup> The African regional human rights system is the only one to have a child-specific instrument and enforcement mechanism (the African Charter on the Rights and Welfare of the Child 1990 and the African Committee on the Rights and Welfare of the Child, respectively). However, the key instruments of both the Inter-American human rights and the European Social Charter systems contain child-specific provisions,<sup>11</sup> which their monitoring bodies have deployed to develop significant bodies of child rights jurisprudence. Despite the very limited reference to children in the European Convention on Human Rights and its protocols,<sup>12</sup> the European Court of Human Rights has also increasingly engaged with children’s rights in the last two decades.<sup>13</sup>

p. 341 ↵ There are also a number of UN and regional special procedures with mandates that engage directly or indirectly with children's rights.<sup>14</sup> However, given the pre-eminence of the CRC, the key focus of this chapter will be that treaty and the work of the CRC Committee.

This chapter opens with a discussion of why it is important to look beyond law when considering children's rights (Section 2), before turning to the definition of the 'child' for the purposes of the CRC (Section 3). Section 4 assesses some of the objections that have been levelled against the CRC and the international child rights law project, focusing in particular on those rooted in cultural relativism. Section 5 centres on the monitoring and enforcement mechanisms associated with the CRC. Section 6 focuses on the rights set out in the CRC, and Section 7 on the obligations it imposes. Duty-bearers (Section 8), jurisdiction (Section 9), and limitations (Section 10) are then addressed. The chapter concludes with some thoughts on the future prospects of the CRC in terms of responding meaningfully to the diverse challenges faced by children.

## 2 The Importance of Looking Beyond Law

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Before heading into our consideration of the CRC, we should note that the largely law-focused children's rights work inspired by it has been complemented—and underpinned—by research and practice from a wide range of disciplinary areas. These include the sociology of childhood, developmental psychology, moral philosophy, education, and political science. This is unsurprising given the questions raised for these disciplines by children, their characteristics as a social group, and their lived experiences.

In moral philosophy, for example, the difference between how children are perceived and traditional conceptions of right-holders (adult, rational, capable) has provided fertile ground for advancing debates around the basis and justification of rights.<sup>15</sup> Sociology has provided crucial insights into the socially constructed nature of childhood and led to a more nuanced understanding of the dissonance between, on the one hand, children's actual capacities and the reality of their lived experiences and, on the other, those misconceptions and stereotypes (for example, of children as being weak, passive, innocent, or incapable) that frequently underpin societal attitudes and policies relating to them.<sup>16</sup> Political scientists have begun to interrogate the assumptions underlying the very limited extent of children's democratic citizenship and their representation within society by parents and other adults.<sup>17</sup> Education scholars have played a key role in advancing the understanding of children as actively contributing social agents to the different contexts in which they find themselves.<sup>18</sup> Development psychologists have fleshed out different understandings of the nature and factors affecting children's 'development'—a key element ↵ of the CRC.<sup>19</sup> Disability studies, gender studies, and equality studies have deepened comprehension of the challenges faced by particular groups of children in rights terms—and made clear that failures to recognize, and respond to, differences between children will result in only the partial satisfaction of such rights.

Insights from these extra-legal disciplines have influenced understandings of the CRC, including the content of the rights it guarantees, as well as the nature and scope of the obligations it imposes. Children's rights are very definitely not just the territory of lawyers. Indeed, compared to many other areas of human rights law, children's rights is a profoundly multidisciplinary field.

### **3 The 'Child' for the Purposes of the CRC**

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Article 1 CRC states that, '[f]or the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier'. Thus, while the CRC favours the age of 18 as being the 'cut-off' for the purposes of childhood, it explicitly recognizes that there can be, and are, significant variations in the practice of states parties.

There is, however, one notable exception to the emphasis on 18 within the Convention. This arises in the context of children and armed conflict. Article 38 CRC makes clear that the duties of states to avoid recruiting children or to prevent children from taking a direct part in hostilities are only owed to 'persons who have not attained the age of fifteen years'. This inconsistency is addressed to some degree by the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, which raises the age for direct participation in hostilities and compulsory recruitment to 18 and requires states to raise the minimum age for voluntary recruitment above 15.

Given sharp disagreement between states on the issue of when life—and, hence, childhood for the purposes of Convention rights enjoyment—begins, it is unsurprising that the CRC makes no mention of the start of childhood.<sup>20</sup> The sole brief reference to the position of the unborn child occurs in the Preamble, which quotes a section of the Declaration of the Rights of the Child 1959 recognizing that 'the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth'. In practice, the CRC Committee has focused its work on the rights of the born child.

While the rights in the Convention potentially apply to all children under 18, this has not prevented the Committee from focusing on particular groups of children in its work. Its general comments on implementing child rights in early childhood<sup>21</sup> and on the implementation of the rights of the child in adolescence,<sup>22</sup> focus on the rights of children under the age of eight<sup>23</sup> and 'the period of childhood from 10 years until the 18th birthday',<sup>24</sup> respectively. Thus, the Committee has not been slow to recognize that different rights are of varying relevance to children of different ages and that the implementation of those rights will not be 'one size fits all' for children of all ages.<sup>25</sup>

### **4 A Eurocentric Instrument?**

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p. 343 While widely ratified, the CRC has been the subject of extensive criticism—and not just from states with concerns about its potentially constraining impact on their law and policy preferences. A range of scholars and activists have argued that the Convention—in the words of one celebrated critique—universalizes a Western conception of childhood,<sup>26</sup> thereby excluding the lived experiences of children outside the West. This has been developed into arguments rooted in cultural relativism<sup>27</sup> that children's rights have conceptual and moral validity only in certain cultural contexts,<sup>28</sup> challenging the legitimacy of the 'universal' approach outlined in the CRC. Proponents of this perspective have, amongst other things, cited the Convention's failure to engage in meaningful depth with the reality of child labour as a feature of many children's lives. Indeed, it is worth noting that there was particularly low African state representation in the CRC negotiations, resulting in a risk of the neglect or sidelining of issues of special importance to African children.

The ‘universal’ application of the CRC has also been challenged in the context of reservations, many of which seek to subordinate or subject its application to domestic laws, policies, and practice, religious beliefs, or customary traditions or practices. Serious questions arise as to whether such reservations are permissible under international law, including Article 51(2) CRC, which states that reservations incompatible with the object and purpose of the CRC shall not be permitted. Whether this is so or not, they are reflective of an effort on the part of numerous states to bring cultural relativism to bear to mitigate their obligations under the Convention.<sup>29</sup>

Claims about the delegitimizingly Western nature of the CRC have been strongly countered by commentators who have flagged how different provisions of the CRC, such as the child’s right to an identity (Article 8), the obligation to take measures against ‘traditional practices prejudicial to the health of children’ (Article 24(3)), and the rights of minority children, including indigenous children (Article 30), reflect a concern with rights challenges faced by children in diverse global contexts.<sup>30</sup> Furthermore, it is notable that standards and jurisprudence of regional human rights systems—including the African and Inter-American ones—have clearly been strongly influenced by the CRC, albeit regional specificities have been accorded greater attention in regional instruments and case law. This has, however, been largely from the perspective that there are gaps in the CRC rather than from the perspective that there are fundamental errors in approach in terms of what it includes.<sup>31</sup>

Finally, the point has been made that the disconnect between the lived experience of rights-bearers and human rights law standards in different global regions is an enforcement issue rather than convincing evidence of the inability of the CRC to engage normatively with the diverse challenges faced by children globally. This is very definitely an issue that is not limited to the CRC and children’s rights.<sup>32</sup>

### p. 344 5 The Role of the CRC Committee

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The CRC is monitored by the 18-member expert CRC Committee, which is mandated to examine the progress made by states parties in achieving the realization of obligations undertaken in the CRC. This is primarily achieved through the state reporting process.<sup>33</sup>

In 2014, the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (CRC-OP3) came into force, which adds to the tools available to the Committee. It sets out a complaints system that allows communications to be submitted by or on behalf of a child or group of children, within the jurisdiction of a state party, claiming to be victims of a violation by that state party of any of the rights set forth in the CRC or one of its substantive Optional Protocols.<sup>34</sup> The CRC-OP3 also provides for inter-state communications<sup>35</sup> and an inquiry procedure for systematic violations.<sup>36</sup> The Committee’s work under the CRC-OP3 is still nascent: as of November 2021, only 22 sets of views have been adopted, with many of these addressing the rights of migrant and asylum-seeking children. Twenty-eight complaints have been declared inadmissible on a range of grounds. One inquiry—focused on residential care in Chile—has been carried out at the time of writing.<sup>37</sup>

Despite being a child-specific instrument, the CRC-OP3 is very strongly based on the ‘general’ complaints mechanisms pertaining to other UN treaty bodies. It is particularly similar to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR-OP), the adoption of which was a crucial step towards a complaints mechanism under the CRC, given that the ICESCR-OP made clear that economic, social, and cultural rights could be rendered justiciable under international law.<sup>38</sup> Despite the commitment of the CRC to child participation, there was no child involvement in the drafting process of the CRC-OP3.

The CRC-OP3 does have some features that are child-specific. For example, it provides that the rules of procedure for using the complaints mechanism must be child-sensitive and include safeguards to prevent manipulation of children and that the Committee may decline to examine communications that are not in the child’s best interests.<sup>39</sup> However, there is no scope for collective complaints, which would arguably be particularly important given the challenges (including capacity, knowledge, and resources) faced by children in terms of engaging themselves with international legal processes.

It is in the Committee’s working methods and rules of procedure that the child-specific nature of the monitoring and enforcement mechanisms has been honed. For instance, the Committee has adopted working methods for child participation in both its reporting process and its days of general discussion in 2014 and 2018, respectively. In setting out a range of measures to be taken to ensure that CRC-OP3 processes are both child-friendly and child rights-consistent, the Committee made clear that:

[i]n fulfilling all functions conferred on it by the [CRC-OP3], the Committee shall be guided by the principle of the best interests of the child(ren). It shall also have regard for the rights and views of the child(ren), the views of the child(ren) being given due weight in accordance with her/his/their age and maturity.<sup>40</sup>

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Therefore, although the international enforcement and monitoring systems associated with the CRC were missing a strong child-centric perspective, the Committee has taken crucial steps to address this important oversight.

## 6 Rights and Principles Under the CRC

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The CRC was the first multilateral UN treaty to include both civil and political rights, as well as economic, social, and cultural rights. Its Part I sets out the rights of children, as well as delineating specific state obligations.

### 6.1 Bringing Economic, Civil, Social, Political, and Cultural Rights Together

Historically, there has been a tendency on the part of different commentators to divide rights up into different categories. A particularly pervasive typology in children’s rights has been that of protection, provision, and participation rights (sometimes reconfigured as protection, participation, provision, and prevention). Such typologies are useful in terms of identifying themes within the CRC as well as providing for

'an easy understanding of the Convention'.<sup>41</sup> However, there are strong arguments against the use of the '3 Ps' to frame analysis of CRC rights—not least the fact that any suggestion that all of the rights fit neatly into one or the other discrete category is incorrect. This typology will not therefore be used in this chapter.

Perhaps the key division for the purposes of the CRC is that between civil and political rights and economic, social, and cultural rights. While the CRC does not specify which rights are which, its Article 4—the umbrella obligations provision under the Convention—makes a distinction for the purposes of states duties:

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. *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.*<sup>42</sup>

If Article 4 CRC is to be applied properly, it is necessary to identify which rights qualify as civil and political and which as economic, social, and cultural. Any such categorization will, of course, be imperfect and there are some rights which could fall under either heading: for instance, the right to non-discrimination (Article 2), the right to protection from all forms of exploitation prejudicial to the child's welfare (Article 36), the right to education (Article 28), and the right to physical and psychological recovery and social reintegration of child victims (Article 39).

The categorization of rights for the purposes of this chapter is based, first, on the inclusion of corresponding rights protections in the ICESCR and the International Covenant on Civil and Political Rights (ICCPR). Where equivalent provisions do not appear in those instruments, the chapter considers whether the relevant CRC rights are preponderantly civil and political or economic, social, and cultural in nature, in the light of how they have been interpreted and applied by the CRC Committee.

p. 346 ↵ The CRC sets out a series of civil and political rights of children, including the rights to life (Article 6(1)), to birth registration (Article 7), to respect for the views of the child (Article 12), to freedom of expression (Article 13), to freedom of thought, conscience, and religion (Article 14), to association and peaceful assembly (Article 15), to protection from interference with privacy, family, home, or correspondence (Article 16), to information (Article 17), to protection from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, and maltreatment or exploitation (Article 19), and to a fair trial (Article 40).

Children's economic, social, and cultural rights include the rights to the highest attainable standard of health (Article 24), to benefit from social security (Article 26), to a standard of living adequate for their development (Article 27), and to rest, leisure, and play (Article 31).

Finally, the CRC contains provisions focused on specific groups of children, which include both civil and political and economic, social, and cultural elements. Such groups include refugee children (Article 22), disabled children (Article 23), and minority or indigenous children (Article 30).

## 6.2 General Principles

In its work, the CRC Committee has identified four so-called ‘general principles’ (sometimes referred to by it as ‘overarching principles’),<sup>43</sup> which it has treated as being of central importance to state efforts to implement the CRC as a whole. These are usefully thought of as lens(es) through which states should conceptualize their efforts to implement children’s rights in all contexts, and which the Committee will use when interpreting and applying the CRC. The provisions identified by the Committee as general principles are Articles 2 (non-discrimination), 3(1) (best interests of the child), 6 (right to life, survival, and development), and 12 (right to respect for the views of the child).

The CRC Committee’s singling out of Articles 2, 3, 6, and 12 CRC has not been without controversy. Some authors have argued, for instance, that Article 5 is more suited as a general principle than Article 6, given the former’s cross-cutting nature and its formulation in direct relation to other rights in the Convention. The inconsistent and sometimes unsatisfactory way in which the Committee makes use of the general principles has also been rightly criticized.<sup>44</sup> That said, the Committee’s emphasis on these provisions has meant that a good understanding of them is of particular importance.

### 6.2.1 Non-discrimination (Article 2)

Article 2(1) CRC prohibits discrimination ‘of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status’. The use of ‘or other status’ makes clear that this list of grounds is not exhaustive. According to the CRC Committee, ‘other status’ includes grounds such as migration status,<sup>45</sup> health status,<sup>46</sup> and sexual orientation or gender identity.<sup>47</sup> The Committee has been explicit that

p. 347 ↵ Article 2 covers multiple and intersectional discrimination.<sup>48</sup> By referring to the status of parents and legal guardians, the CRC recognizes that children may be the subject of discrimination due to their association with, or membership of, a particular social group.<sup>49</sup> Notably, there is no explicit prohibition on age discrimination: that is, discrimination against children on the basis of their age vis-à-vis other children or adults. However, a growing number of commentators argue that Article 2 should be read as covering this, drawing on understandings of the particular political, social, and economic position of children within societies as well as growing research around the phenomenon of childism (frequently understood as prejudice and negative attitudes towards or stereotyping of children).<sup>50</sup>

Drawing on the work of the Human Rights Committee and other treaty bodies, the CRC Committee has been clear that Article 2 CRC is not focused on identical treatment: there may be a call for special measures to diminish or eliminate conditions that cause discrimination with regard to particular groups of children.<sup>51</sup> Differential treatment must ‘be lawful and proportionate, in pursuit of a legitimate aim and in line with the child’s best interests and international human rights norms and standards’ to be in conformity with Article 2.<sup>52</sup>

### 6.2.2 Best interests of the child (Article 3(1))

While the CRC Committee sometimes cites Article 3 CRC as a whole as a general principle, its practice makes clear that it is the first paragraph of that provision that is of primary importance when it comes to its operationalization. Article 3(1) provides:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

In contrast to more demanding domestic provisions,<sup>53</sup> the child's best interests are described as a *primary* rather than a *paramount* consideration. As such, the child's best interests are neither always determinative nor do they always trump other considerations. The term 'all actions concerning children' has been interpreted very broadly by the Committee to cover a wide range of actions and inactions that directly or indirectly affect children (including decisions, acts, conduct, proposals, services, procedures and other measures, inaction, and omissions).<sup>54</sup>

The Committee has described the child's best interests as a 'threefold concept'. First, it is a 'substantive right' of the child 'to have his or her best interests assessed and taken as a primary consideration when different interests are being considered in order to reach a decision on the issue at stake, and the guarantee that this right will be implemented whenever a decision is to be made concerning a child, a group of identified or unidentified children or children in general'.<sup>55</sup>

p. 348 ↵ Second, best interests is a 'fundamental, interpretative legal principle: If a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen'. Crucially—given the potential indeterminacy inherent in the identification of what a child's best interests might be—the Committee has flagged that 'the rights enshrined in the Convention and its Optional Protocols provide the framework for interpretation'.<sup>56</sup> In doing so, the Committee has made clear that CRC rights may be used as signposts by which the best interests of the child may be identified.<sup>57</sup>

Third, the child's best interests is a 'rule of procedure'. Whenever a decision is to be made that will affect a child or children, 'the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned'. Reverting back to the first element, the Committee has stated that 'the justification of a decision must show that the right has been explicitly taken into account'.<sup>58</sup>

While the Committee can legitimately be criticized for this somewhat confusing explanation of the best interests principle, its reluctance to narrow its understanding is perhaps unsurprising given the general language of Article 3(1) CRC, as well as the Committee's view of that provision as 'a dynamic concept that encompasses various issues which are continuously evolving'.<sup>59</sup> The Committee has repeatedly stressed the importance of a flexible, context-specific approach being adopted when applying Article 3(1). However, defining its scope is particularly important given that the Committee regards it as a directly applicable (self-executing) provision that can be invoked before domestic courts.<sup>60</sup>

### **6.2.3 Right to life, survival, and development (Article 6)**

Article 6(1) CRC guarantees the child's right to life, while Article 6(2) calls on states to ensure to the maximum extent possible the survival and development of the child. The provision is frequently summarized—including by the CRC Committee—as ‘the right to life, survival, and development’. All three elements of Article 6 impose both positive and negative obligations.

Key issues addressed by the Committee in relation to the right to life have included the death penalty, life imprisonment, torture, violence against children, armed conflict, harmful cultural practices, and traffic safety and other accidental causes of death.<sup>61</sup> The use of ‘to the maximum extent possible’ in Article 6(2), as well as the issues addressed by the Committee under the auspices of Article 6(2), make clear that, in contrast to the right to life, state obligations with regard to survival and development are qualified—and are best regarded as socio-economic rather than civil and political in nature. ‘Survival’-related issues addressed by the Committee include violence<sup>62</sup> as well as malnutrition and poor sanitation.<sup>63</sup>

The Committee has been clear that it expects states to interpret ‘development’ as a holistic concept, embracing the child’s physical, mental, spiritual, moral, psychological, and social development, with implementation measures to be aimed at achieving the optimal development for all children.<sup>64</sup> A more extensive focus on development—both in the context of Article 6 and other CRC provisions—has been a feature of the Committee’s work in the last decade.<sup>65</sup>

p. 349 **6.2.4 Right to respect for the views of the child (Article 12)**

Article 12 has often been described as the most revolutionary of the CRC’s provisions. There is no question that its conceptualization of children as active social agents whose views on matters affecting them merit being taken into account was deeply innovative in 1989.

Article 12(1) CRC provides:

States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

In particular, children shall, according to Article 12(2), be provided the opportunity to be heard in any judicial and administrative proceedings affecting them.

Article 12(1) is wide-ranging: it covers ‘all matters affecting the child’. It also sets out a right to express views which is underpinned by a requirement that states ensure conditions for expressing views that account for the child’s individual and social situation and ‘an environment in which the child feels respected and secure when freely expressing her or his opinions’.<sup>66</sup> Furthermore, the child must be informed about the matters and possible decisions to be taken (and their consequences) by those who are responsible for hearing the child, and by the child’s parents or guardian.<sup>67</sup> Article 12 is linked to and reinforced by other CRC rights, including the right to freedom of expression and the right to information.<sup>68</sup>

The Committee has made clear that views can also be expressed through non-verbal forms of communication, including play, body language, facial expressions, and drawing, through which very young children demonstrate understanding, choices, and preferences. Nor is it necessary for a child to have comprehensive knowledge of all aspects of the matter affecting them—rather, they need only have ‘sufficient understanding to be capable of appropriately forming her or his own views on the matter’.<sup>69</sup>

That said, Article 12 is not a vehicle by which children’s views are rendered automatically determinative. There are two immediate things to note from its wording. First, for a child to have the right to express their views, he or she must be deemed ‘capable of forming his or her own views’. Second, even where a child is deemed to have that right, the weight to be given to their views varies depending on their ‘age and maturity’. The Committee has asserted with regard to the first point that ‘this phrase should not be seen as a limitation, but rather as an obligation for States parties to assess the capacity of the child to form an autonomous opinion to the greatest extent possible’.<sup>70</sup> With regard to the second point, age alone cannot establish the significance of a child’s views. Instead, maturity—defined by the Committee as ‘the capacity of a child to express her or his views on issues in a reasonable and independent manner’<sup>71</sup>—must be taken into account. As with ‘best interests’, the views of the child have to be assessed on a case-by-case examination. However, in all of these instances an adult mediator has the determinative role: both in determining capacity and in deciding on the ultimate weight to be accorded to the child’s views.

p. 350 ↵ The emphasis on child autonomy and self-determination in Article 12 contrasts sharply with more paternalist or protectionist elements of the CRC, notably Article 3. Nevertheless, the Committee has asserted that:

[t]here is no tension between articles 3 and 12, only a complementary role of the two general principles: one establishes the objective of achieving the best interests of the child and the other provides the methodology for reaching the goal of hearing either the child or the children. In fact, there can be no correct application of article 3 if the components of article 12 are not respected. Likewise, article 3 reinforces the functionality of article 12, facilitating the essential role of children in all decisions affecting their lives.<sup>72</sup>

Although the claim that there is ‘no tension’ is disputable, the Committee is clearly keen to present the articles as mutually reinforcing rather than in conflict.

There is a huge literature on Article 12, with a growing number of methodologies developed by academics and civil society designed to give it effect.<sup>73</sup> There is no question that Article 12 has played a key role in challenging traditional views of children as passive objects of societal or governmental interest and has been at the heart of research, policy, judicial, and other efforts to bring children’s views to bear on decision-making related to them in contexts as varied as child protection, civil and criminal proceedings, strategic litigation, public budgeting, education, and national policy making.

There is increasing acceptance of children as social and even political agents, not least due to the impact of child and youth climate activism such as the Fridays for Future Movement. However, there remain very serious obstacles to children having a significant impact on adult-dominated law and policy processes that are key to the achievement of their rights. One important reason for this is the ongoing exclusion of children,

and younger children in particular, from democratic citizenship due to their inability to exert effective impact on democratic decision-making processes.<sup>74</sup> The Committee has yet to engage in any depth with the child's right to vote and Article 12—with its focus on adult-mediated child involvement—offers only a limited platform from which to do so.<sup>75</sup> In sum, while Article 12 marked definite progress in terms of understanding the agency and capacity of children, it has not resulted in a paradigm shift in terms of the child–adult power differential.

## 7 Obligations Imposed by the CRC

The first sentence of Article 4 CRC makes clear the wide range of implementation measures that states must take to give effect to Convention rights. These include legislative, administrative, and other measures. While implementation measures will vary depending on what is required by specific national contexts, they are 'intended to promote the full enjoyment of all rights in the Convention by all children, through legislation, the establishment of coordinating and monitoring bodies ... comprehensive data collection, awareness-raising and training and the development and implementation of appropriate policies, services and programmes'.<sup>76</sup> Since policies without adequate resourcing will not → advance children's rights, the CRC Committee has stressed that states parties 'are obliged to mobilize, allocate and spend public resources in a manner that adheres to their obligations of implementation'.<sup>77</sup>

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The CRC imposes a range of positive and negative obligations. The Committee has repeatedly referred to the tripartite typology of state obligations in this context, namely that states parties must 'respect, protect and fulfil' CRC rights.<sup>78</sup> The obligation to 'fulfil' requires states 'to take action to ensure the full realization of the rights of the child', that is, to facilitate, promote, and provide for children's rights.<sup>79</sup> The Committee has located the tripartite typology of 'respect, protect and fulfil' in the first sentence of Article 4 and hence made it clear that it regards it as applying to all rights—not just economic, social, and cultural rights.<sup>80</sup> In doing so, it used an understanding of the different elements of that typology tightly based on that employed by the UN Committee on Economic, Social and Cultural Rights.<sup>81</sup>

Unsurprisingly given the second sentence of Article 4, in recent years the Committee has made great efforts to delineate the obligations imposed specifically by economic, social, and cultural rights.<sup>82</sup> The first—and, indeed, most significant—thing to note when looking at how the CRC Committee has addressed these rights is its heavy reliance on the work of the Committee on Economic, Social and Cultural Rights.

In its first expansive discussion of Article 4 CRC in a general comment, the CRC Committee highlighted that that provision was similar to Article 2(1) ICESCR and that the general comments of the Committee on Economic, Social and Cultural Rights should be seen as complementary to its own general comment.<sup>83</sup> The Committee went on to state that:

[t]he second sentence of Article 4 reflects a realistic acceptance that lack of resources—financial and other resources—can hamper the full implementation of economic, social and cultural rights in some States; *this introduces the concept of 'progressive realization' of such rights*: States need to be able to demonstrate that they have implemented 'to the maximum extent of their available resources' and, where necessary, have sought international cooperation.<sup>84</sup>

It did so despite the fact that there is no reference to the language of progressivity in Article 4 CRC. Subsequently, in its General Comment 19, the Committee stated that the reference to the language of 'to the maximum extent of their available resources' in Article 4 'implies that the full realization of those rights will necessarily be achieved progressively'.<sup>85</sup> Progressivity has thus been deliberately read into Article 4 by the Committee.

'Resources' for the purpose of Article 4 are not simply financial in nature but include technological, economic, human, and organizational ones. Furthermore, 'available resources' are not just limited to those available in the national context but include those available from the international community through international assistance. Significantly from a child rights perspective, the Committee has recommended that states 'assess "available resources" beyond financial measures', emphasizing 'the importance of systematically supporting parents and families which are among the most important "available resources" for children'.<sup>86</sup>

- p. 352 ↵ In its later work, the Committee has focused on financial resources in the context of budgets specifically, stating that Article 4 requires states parties 'to mobilize, allocate and spend sufficient financial resources' and that funds allocated to policies and programmes which further the realization of CRC rights 'should be spent optimally and in line with the general principles of the Convention'.<sup>87</sup> The Committee has also flagged that corruption and mismanagement of public resources 'represents a failure by the state to comply with its obligation to use the maximum of available resources'.<sup>88</sup>

Not all obligations imposed by Article 4 are progressive or limited by available resources. Indeed, when discussing 'progressive realization' and 'maximum available resources' the Committee has emphasized that its statements on these obligations were 'without prejudice to obligations that are immediately applicable according to international law'.<sup>89</sup> Furthermore, it has stated that 'progressive realization' in terms of Article 4 imposes an immediate obligation for states 'to undertake targeted measures to move as expeditiously and effectively as possible towards the full realization of economic, social, and cultural rights of children'.<sup>90</sup> The Committee has also adopted the concept of the 'minimum core' of economic, social, and cultural rights, drawing on the relevant work of the Committee on Economic, Social and Cultural Rights.<sup>91</sup>

Non-retrogression is another immediate duty identified by the Committee. In its General Comment 19, it stated that:

[t]he obligation imposed on States parties by article 4 to realize children's economic, social and cultural rights 'to the maximum extent' also means that they should not take deliberate retrogressive measures in relation to economic, social and cultural rights. States parties should not allow the existing level of enjoyment of children's rights to deteriorate. In times of economic crisis, regressive measures may only be considered after assessing all other options and ensuring that children are the last to be affected, especially children in vulnerable situations. States parties shall demonstrate that such measures are necessary, reasonable, proportionate, non-discriminatory and temporary and that any rights thus affected will be restored as soon as possible. States parties should take appropriate measures so that the groups of children who are affected, and others with knowledge about those children's situation, participate in the decision-making process related to such measures. The immediate and minimum core obligations imposed by children's rights shall not be compromised by any retrogressive measures, even in times of economic crisis.<sup>92</sup>

As such, the Committee has developed a clear schema of obligations under the CRC.

## 8 Duty-Bearers Under the CRC

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The key duty-bearer for the purposes of the monitoring and enforcement mechanisms set out in the CRC is the state. However, the Convention also makes a number of references to non-state actors.

The CRC repeatedly refers to the responsibilities, rights, and duties of 'parents' and others responsible for the day-to-day upbringing and support of the child. Article 3(2), for instance, provides that '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'. <sup>p. 353</sup> Article 18 goes further by making clear the respective duties of the state, parents, and legal guardians. In requiring states to 'use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child', Article 18(1) provides that '[p]arents or, as the case may be, legal guardians, have the *primary responsibility* for the upbringing and development of the child. The best interests of the child will be their basic concern'.<sup>93</sup> This does not, however, absolve the state of its obligations under the CRC. Article 18(2) continues to say that: 'For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties *shall render appropriate assistance* to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children' (emphasis added). Article 18 thus depicts the state's role as a complementary and supportive one—not as a supplanter of parental responsibility.<sup>94</sup>

A similar balance of roles is set out in Article 27 CRC guaranteeing the child's right to a standard of living adequate for their development. Article 27(2) makes clear that parents or others responsible for the child 'have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development'. However, states 'shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes' (Article 27(3)). As such, the Convention clearly envisions children as generally being under the care of parents or other adults who have primarily responsibility for the development and upbringing of their children, while casting the state in a collaborative assistive role.

The most celebrated CRC reference to parental responsibilities, rights, and duties is Article 5, which provides:

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, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 5 does not create a right of children to exercise rights in accordance with their evolving capacities so much as it recognizes their right to receive appropriate guidance and direction from parents and guardians to secure the enjoyment of their rights in a manner consistent with their evolving capacities.<sup>95</sup> The CRC

Committee has defined 'evolving capacities' as 'an enabling principle that addresses the process of maturation and learning through which children progressively acquire competencies, understanding and increasing levels of agency to take responsibility and exercise their rights'. According to the Committee, 'the more a child knows and understands, the more his or her parents will have to transform direction and guidance into reminders and gradually to an exchange on an equal footing'.<sup>96</sup> At the time of the adoption of the CRC, Article 5 was significant in its explicit recognition of the child as a right-holder rather than simply an object of parental rights and duties. Thirty years on, this is—in some societies at least—a less controversial conceptualization of child–parent relations.<sup>97</sup>

p. 354 ↵ Another key set of actors with an important role to play with regard to CRC rights—although not expressly referred to in the Convention—are business entities. While the Committee has carefully focused its general comment on the impact of the business sector on children's rights on the obligations of states, it has explicitly recognized that 'duties and responsibilities to respect the rights of children extend in practice beyond the State and State-controlled services and institutions and apply to private actors and business enterprises'. It has stressed that all businesses must meet their responsibilities regarding children's rights, with states ensuring that they do so, and that business enterprises must not undermine states' abilities to meet their obligations towards children.<sup>98</sup> Thus, while it is clear that business entities have 'responsibilities', the Committee has been careful not to suggest that the Convention imposes directly enforceable obligations on them: '[h]ost States have the primary responsibility to respect, protect and fulfil children's rights in their jurisdiction'.<sup>99</sup>

The Committee has also made reference to the responsibilities of a range of other non-state actors, including the media, researchers, and health service providers.<sup>100</sup> Nevertheless, it is important to bear in mind that the state remains the ultimate guarantor of children's rights—including where parents (or others responsible for the day-to-day care of the child) either cannot or will not give effect to their own duties or responsibilities with regard to children's rights. Furthermore, as noted earlier, the monitoring and enforcement system for children's rights is state-centric: the CRC Committee does not monitor parents' efforts and achievements in terms of the role set out for them under the treaty. Nor can a complaint under the CRC-OP3 be brought against anyone other than a state party.

## 9 Jurisdiction and Beyond Under the CRC

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Article 2(1) CRC provides that states parties shall 'respect and ensure the rights set forth in the present Convention to each child within their jurisdiction'. This provision has been construed by the CRC Committee as the basis of the Convention's jurisdictional application, including the extraterritorial jurisdiction identified by the Committee.<sup>101</sup> Its work on jurisdiction remains relatively nascent, principally limited to statements in its general comments on migration as well as a small number of admissibility decisions. The Committee has been criticized for its failure to make clear the standard it uses when assessing if and when extraterritorial obligations are owed by states. While it has identified a number of factors or 'circumstances' relevant to the determination of jurisdiction in particular cases, serious questions remain with regard to how it will identify and apply extraterritorial obligations.<sup>102</sup> In a recent admissibility decision, the Committee addressed the issue

of transboundary harm related to climate change. The Committee stated that the appropriate test for jurisdiction in this context was that adopted by the Inter-American Court of Human Rights in its 2017 Advisory Opinion on the Environment and Human Rights.<sup>103</sup> According to the Committee, this implied that:

when transboundary harm occurs, children are under the jurisdiction of the State on whose territory the emissions originated for the purposes of article 5 (1) [jurisdiction] of the Optional Protocol if there is a causal link between the acts or omissions of the State in question and the negative impact on the rights of children located outside its territory, when the State of origin exercises effective control over the sources of the emissions in question.<sup>104</sup>

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That said, states' obligations do not relate solely to rights-holders who are subject to their jurisdiction. Article 4 CRC makes explicit reference to 'international co-operation'—or, as the Committee views it, 'global implementation through international cooperation'.<sup>105</sup> Although no mention is made of jurisdiction in Article 4, this reference apparently results in the imposition of extraterritorial obligations.<sup>106</sup> While the full scope of Article 4 is not yet clear,<sup>107</sup> recent years have seen significant development of the understanding of this obligation with a growing awareness that 'international cooperation' as provided for in the CRC and other human rights treaties gives rise to legally binding obligations.<sup>108</sup>

The Committee has been clear that states 'have obligations to engage in international cooperation for the realization of children's rights beyond their territorial boundaries'.<sup>109</sup> It has noted that 'Article 4 emphasizes that implementation of the Convention is a cooperative exercise for the States of the world' and that the Convention should form the framework for international development assistance, with programmes of donor states being rights-based.<sup>110</sup> States that lack the resources needed to implement CRC rights are 'obliged to seek international cooperation', while states with resources for international cooperation have an obligation to provide such cooperation.<sup>111</sup> States should demonstrate that they have made every effort to seek and implement international cooperation to realize the rights of the child and are to collaborate with other states' efforts to mobilize the maximum available resources.<sup>112</sup>

Crucially, the Committee has also specified that states should comply with their Convention obligations when engaging in development cooperation as members of international organizations and when signing international agreements.<sup>113</sup> States should not accept loans from international organizations, or agree to conditions set forth by them, if those loans or policies are likely to result in violations of the rights of children.<sup>114</sup> Furthermore, the Committee has stressed that 'the World Bank Group, the International Monetary Fund and World Trade Organization should ensure that their activities related to international cooperation and economic development give primary consideration to the best interests of children and promote full implementation of the Convention'.<sup>115</sup>

## 10 Limitations

The CRC does not contain a general limitation clause. However, rights-specific limitations are included in some CRC civil and political rights protections,<sup>116</sup> along the lines of limitation clauses in the ICCPR. The Committee's work on limitations is sparse but the similarity in phrasing of the relevant provisions with

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corresponding rights protections under the ICCPR means the work of the Human Rights Committee provides useful insights into how these limitations might be applied by the CRC Committee in the future. The same is true regarding the Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR.<sup>117</sup>

April 2020 saw a significant advance in this context, with the Committee issuing a statement on the COVID-19 pandemic.<sup>118</sup> Here, it explicitly recognized that:

in crisis situations, international human rights law exceptionally permits measures that may restrict the enjoyment of certain human rights in order to protect public health. However, such restrictions must be imposed only when necessary, be proportionate and kept to an absolute minimum.

This would appear to be the (admittedly broad) parameters the Committee will use to assess the permissibility of state-imposed limitations on children's rights in the COVID-19 context. Interestingly, it did not refer to the limitations expressly outlined in the CRC. As such, the Committee can be understood as viewing limitations as applying to rights beyond those containing express limitation clauses. Indeed, given the different challenges faced by children in terms of their rights enjoyment flagged by the Committee, it seems to regard limitations as being relevant in the context of economic, social, and cultural rights as well.

The Committee continued to specify that states should ensure that 'responses to the pandemic, including restrictions and decisions on allocation of resources, reflect the principle of the best interests of the child'. Yet, perhaps surprisingly, the other general principles—non-discrimination (Article 2), the right to life, survival, and development (Article 6), the right to respect for the child's views (Article 12)—were not cited here. That is not to say, however, that the CRC will not ultimately be interpreted in a joined up way so that the crucial emphasis on non-discrimination, the threats posed to children's survival and development, and the Committee's recommendation to states to '[p]rovide opportunities for children's views to be heard and taken into account in decision-making processes on the pandemic' elsewhere in the statement, are also taken into account in state decision-making in relation to restrictions of rights. Given the Committee's relative silence on limitations to date, assessing states parties' rights compliance in the context of the pandemic will provide it with an important opportunity to develop its work in this area.

## 11 Conclusion

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What is the future of children's rights protection under the CRC? This chapter has flagged the criticisms that the Convention has received from a cultural relativist perspective. However, critique of the CRC is not just limited to those who would dismiss, sidestep, or undermine it. Even its strongest proponents recognize that it has gaps and blind spots. The Convention is now over 30 years old. As such, it might be forgiven for its failure to expressly address key challenges in terms of child rights enjoyment that have since emerged—for instance, the impacts of HIV/AIDS, climate change, and environmental degradation. Similarly, the last three decades have seen huge strides in understanding of ← the structural inequality and social, economic, and democratic vulnerability faced by children within different societies, as well as the prevailing adult-child power differential. Again, this is work that has been accelerated by the Convention and is not necessarily something that it would be expected to reflect at the time of its adoption.

However, the lack of attention paid to girl children and gay children, amongst other groups, cannot be excused away on the basis of the Convention's age.<sup>119</sup> The CRC Committee has advanced understanding about the protection that the Convention accords in these and other areas, particularly through its general comments. However, the fact remains that the Convention's silence on globally contested issues, such as the minimum age of criminal responsibility, parent-administered physical punishment, and child marriage, has served to undermine efforts to advance children's rights in these contexts in the face of state resistance and indifference.

In sum, while the CRC is an authoritative and wide-ranging statement of children's rights, it is imperfect. As such, the CRC Committee's treatment of it as a 'living instrument, whose interpretation develops over time'<sup>120</sup> is crucial to ensuring its relevance and utility to child right-holders. The Committee's record so far suggests strongly that it—and the CRC—will rise to this challenge effectively.

## Further Reading

APPELL, 'The Pre-Political Child of Child-Centered Jurisprudence' (2009) 46 *Houston LR* 703.

ARTS, 'Children's Rights and Climate Change' in Fenton-Glynn (ed), *Children's Rights and Sustainable Development: Interpreting the UNCRC for Future Generations* (Cambridge University Press, 2019) 216.

BRITTEL and DESMET, 'Thirty Years of Research on Children's Rights in the Context of Migration: Towards Increased Visibility and Recognition of Some Children, But Not All?' (2020) 28 *Int J of Children's Rights* 36.

FREEMAN, 'The Human Rights of Children' (2010) 63 *Current Legal Problems* 1.

HOFFMAN and STERN, 'Incorporation of the UN Convention on the Rights of the Child in National Law' (2020) 28 *Int J of Children's Rights* 133.

KILKELLY and LIEFAARD (eds), *International Human Rights of Children* (Springer, 2019).

LIEBEL, 'Do Children Have a Right to Work? Working Children's Movements in the Struggle for Social Justice' in Hanson and Nieuwenhuys (eds), *Reconceptualizing Children's Rights in International Development* (Cambridge University Press, 2012) 225.

MEZMUR, 'The African Children's Charter @ 30: A Distinction Without a Difference?' (2020) 28 *Int J of Children's Rights* 693.

NOLAN, 'The Child as "Democratic Citizen": Challenging the "Participation Gap"' (2010) 4 *Public Law* 767.

TAEFI, 'The Synthesis of Age and Gender: Intersectionality, International Human Rights Law and the Marginalisation of the Girl-Child' (2009) 17 *Int J of Children's Rights* 345.

p. 358 ↪ TISDALL, 'Conceptualising Children and Young People's Participation: Examining Vulnerability, Social Accountability and Co-Production' (2017) 21 *Int J of HR* 59.

TOBIN (ed), *The UN Convention on the Rights of the Child: A Commentary* (Oxford University Press, 2019).

TÜRKELLI, 'Children's Rights when Financing Development through Multilateral Development Banks: Mapping the Field and Looking Forward' (2021) 29 *Int J of Children's Rights* 199.

## Useful Websites

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UN Committee on the Rights of the Child: <<https://www.ohchr.org/en/treaty-bodies/crc>> <<https://www.ohchr.org/EN/HRBodies/CRC>>

Child Rights Connect: <<https://www.childrightsconnect.org>> <<https://www.childrightsconnect.org>>

Child Rights Information Network: <<http://www.crin.org>> <<http://www.crin.org>>

## Questions for Reflection

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1. Why is it important that children should be accorded rights and recognized as 'rights-bearers' under international human rights law?
2. What are the key strengths and weaknesses of the standards set out in the CRC?
3. What are the key obligations imposed by the different rights under the CRC?
4. How is the balance between child autonomy and paternalism/protectionism struck in: (a) different parts of the CRC; and (b) the CRC Committee's work?

## Notes

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<sup>1</sup> At the time of writing, only the US had not ratified the CRC, having signed it in 1995.

<sup>2</sup> At the international level, see eg the UN Convention on the Rights of Persons with Disabilities (2006). At the regional level, see eg the Protocols to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) and of Older Persons in Africa (2016).

<sup>3</sup> See Detrick, *The United Nations Convention on the Rights of the Child: A Guide to the 'Travaux Préparatoires'* (Martinus Nijhoff, 1992); OHCHR, *Legislative History of the Convention on the Rights of the Child* (2007).

<sup>4</sup> GA Res 31/169 (1976).

<sup>5</sup> GA Res 1386 (XIV) (1959).

<sup>6</sup> See OHCHR (2007) 3–25.

<sup>7</sup> See Child Rights Connect, 'Child Rights Jurisprudence', <<https://opic.childrightsconnect.org/jurisprudence-database>> <<https://opic.childrightsconnect.org/jurisprudence-database>>.

<sup>8</sup> See Joint General Comment 3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and 22 of the CRC Committee, CRC/C/GC/22 (16 November 2017); Joint General Comment 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and 23 of the CRC Committee, CRC/C/GC/23 (16 November 2017); Joint General Recommendation 31 of the Committee on the Elimination of Discrimination against Women/General Comment 18 of the CRC Committee, CEDAW/C/GC/31-CRC/C/GC/18 (14 November 2014).

<sup>9</sup> See eg Committee on the Rights of Persons with Disabilities, General Comment 3, CRPD/C/GC/3 (25 November 2016); Committee on the Elimination of Discrimination against Women, General Recommendation 38, CEDAW/C/GC/38 (20 November 2020); Committee on Economic, Social and Cultural Rights, General Comment 11, E/C.12/1999/4 (10 May 1999).

<sup>10</sup> See Nolan and Kilkelly, 'Children's Rights under Regional Human Rights Law—A Tale of Harmonisation?' in Buckley et al (eds), *Towards Convergence in International Human Rights Law: Approaches of Regional and International Systems* (Brill/Martinus Nijhoff, 2016) 296; Cavallaro et al, *Doctrine, Practice and Advocacy in the Inter-American Human Rights System* (OUP, 2019) 595–635; Mezmur, 'The African Children's Charter @ 30: A Distinction Without a Difference?' (2020) 28 *Int J of Children's Rights* 693; Fenton-Glynn, *Children and the European Court of Human Rights* (OUP, 2021).

<sup>11</sup> ACHR, Art 19; European Social Charter, Art 17; Revised European Social Charter, Art 17.

<sup>12</sup> ECHR, Arts 5(1)(d) and 6(1); Protocol 1, Art 2; Protocol 7, Art 5.

<sup>13</sup> See Fenton-Glynn (2021).

<sup>14</sup> eg the UN Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography, and other child sexual abuse material, the UN Special Rapporteur on trafficking in persons, especially women and children, and the Rapporteur on the Rights of the Child of the Inter-American Commission on Human Rights.

<sup>15</sup> eg Archard and Macleod (eds), *The Moral and Political Status of Children* (OUP, 2002).

<sup>16</sup> eg Qvortrup et al (eds), *The Palgrave Handbook of Childhood Studies* (Palgrave, 2011).

<sup>17</sup> eg Cohen, 'Neither Seen Nor Heard: Children's Citizenship in Contemporary Democracies' (2005) 9 *Citizenship Studies* 221.

<sup>18</sup> eg Quennerstedt and Mood, 'Educational Children's Rights Research 1989–2019: Achievements, Gaps and Future Prospects' (2020) 28 *Int J of Children's Rights* 183.

<sup>19</sup> For a critical take on such work, see Buss, 'What the Law Should (And Should Not) Learn from Child Development Research' (2009) 38 *Hofstra LR* 13.

<sup>20</sup> See OHCHR (2007) 301–12.

<sup>21</sup> General Comment 7, CRC/C/GC/7/Rev.1 (20 September 2006).

<sup>22</sup> General Comment 20, CRC/C/GC/7/Rev.1 (6 December 2016).

<sup>23</sup> General Comment 7, para 4.

<sup>24</sup> General Comment 20, para 5.

<sup>25</sup> See further Section 8.

<sup>26</sup> Pupavac, 'The Infantilisation of the South and the Universalisation of Childhood' [1998] *HRLR* 3.

<sup>27</sup> See Chapter 3.

<sup>28</sup> See eg Bentley, 'Can There Be Any Universal Children's Rights?' (2005) 9 *Int J of Human Rights* 107.

<sup>29</sup> See Schabas, 'Reservations to the Convention on the Rights of the Child' (1996) 18 *HRQ* 472, as well as the responses of states parties to various reservations by other states parties, <[https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-11&chapter=4](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4)>.

<sup>30</sup> eg Grover, 'A response to KA Bentley's "Can There Be Any Universal Children's Rights"' (2007) 11 *Int J of Human Rights* 429.

<sup>31</sup> See Nolan and Kilkelly (2016).

<sup>32</sup> Grover (2007).

<sup>33</sup> See Chapter 19.

<sup>34</sup> CRC-OP3, Art 5(1).

<sup>35</sup> CRC-OP3, Art 12.

<sup>36</sup> CRC-OP3, Arts 13–14.

<sup>37</sup> Espejo Yaksic, 'Report of the investigation in Chile under article 13 of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure', CRC/C/CHL/INQ/1, Leiden Children's Rights Observatory, <<https://www.childrensrightsobservatory.nl/case-notes/casenote2018-2>>.

<sup>38</sup> See Egan, 'The New Complaints Mechanism for the Convention on the Rights of the Child: A Mini Step Forward for Children' (2014) 22 *Int J of Children's Rights* 205.

<sup>39</sup> CRC-OP3, Art 3.

<sup>40</sup> Rules of procedure under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, CRC/C/62/3 (8 April 2013) Rule 1.

<sup>41</sup> Hammarberg, 'The UN Convention on the Rights of the Child—and How to Make It Work' (1990) 12 *HRQ* 97, 99.

<sup>42</sup> Emphasis added.

<sup>43</sup> eg CRC Committee, General Comment 22, CRC/C/GC/22 (16 November 2017) para 19.

<sup>44</sup> Hanson and Lundy, 'Does Exactly What it Says on the Tin? A Critical Analysis and Alternative Conceptualisation of the So-called "General Principles" of the Convention on the Rights of the Child' (2017) 25 *Int J of Children's Rights* 285–306, 300–1.

<sup>45</sup> General Comment 22, para 9.

<sup>46</sup> CRC Committee, General Comment 3, CRC/GC/2003/3 (17 March 2003) paras 7–9.

<sup>47</sup> See Peleg, 'International Rights of the Child: General Principles' in Kilkelly and Liefaard (eds), *International Human Rights of Children* (Springer, 2019) 135–57.

<sup>48</sup> General Comment 22, para 23.

<sup>49</sup> See further CRC, Art 2(2) which requires states to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

<sup>50</sup> For more on childism, see Young-Bruehl, *Childism: Confronting Prejudice Against Children* (Yale UP, 2012).

<sup>51</sup> CRC Committee, General Comment 5, CRC/GC/2003/5 (27 November 2003) para 12.

<sup>52</sup> General Comment 22, para 22.

<sup>53</sup> eg Section 28(2) of the Constitution of the Republic of South Africa 1996. See also CRC, Art 21, which refers to best interests as a 'paramount consideration' in the context of adoption.

<sup>54</sup> CRC Committee, General Comment 14, CRC/C/GC/14 (29 May 2013) paras 17, 18.

<sup>55</sup> General Comment 14, para 6.

<sup>56</sup> General Comment 14, para 6.

<sup>57</sup> Van Bueren, *The International Law on the Rights of the Child* (Martinus Nijhoff, 1998) 48.

<sup>58</sup> General Comment 14, para 6.

<sup>59</sup> General Comment 14, para 11.

<sup>60</sup> General Comment 14, para 6.

<sup>61</sup> See Peleg and Tobin, 'The Rights to Life, Survival and Development' in Tobin (ed), *The UN Convention on the Rights of the Child: A Commentary* (OUP, 2019) 186, 217–18.

<sup>62</sup> CRC Committee, General Comment 15, CRC/C/GC/15 (17 April 2013) para 17.

<sup>63</sup> See Peleg in Kilkelly and Liefhaar (2019) 146.

<sup>64</sup> General Comment 5, para 12.

<sup>65</sup> See Peleg, *The Child's Right to Development* (CUP, 2019).

<sup>66</sup> CRC Committee, General Comment 12, CRC/C/GC/12 (20 July 2009) para 23.

<sup>67</sup> General Comment 12, para 25.

<sup>68</sup> General Comment 12, para 80.

<sup>69</sup> General Comment 12, para 21.

<sup>70</sup> General Comment 12, para 20.

<sup>71</sup> General Comment 12, para 30.

<sup>72</sup> General Comment 12, para 74.

<sup>73</sup> eg Larkins et al, 'Support for Children's Protagonism: Methodological Moves towards Critical Children Rights Research Framed from Below' (2015) 23 *Int J of Children's Rights* 332; Lundy, "Voice" is not enough: conceptualising Article 12 of the United Nations Convention on the Rights of the Child' (2007) 33 *British Educational Research J* 927.

<sup>74</sup> See Nolan, *Children's Socio-Economic Rights, Democracy and the Courts* (Hart, 2011) chs 2 and 3.

<sup>75</sup> See Nolan, 'The Child as "Democratic Citizen": Challenging the "Participation Gap"' [2010] *Public Law* 767.

<sup>76</sup> General Comment 5, para 9.

<sup>77</sup> CRC Committee, General Comment 19, CRC/C/GC/19 (20 July 2016) para 27.

<sup>78</sup> eg General Comment 4, para 3; General Comment 15, paras 1 and 71–4.

<sup>79</sup> General Comment 19, para 27(c).

<sup>80</sup> General Comment 19, para 27.

<sup>81</sup> See Chapter 7.

<sup>82</sup> For a more detailed discussion of what follows, see Nolan, 'Children's Economic and Social Rights' in Kilkelly and Liefraard (2019) 239.

<sup>83</sup> General Comment 5, para 5.

<sup>84</sup> General Comment 5, para 7 (emphasis added).

<sup>85</sup> Para 25.

<sup>86</sup> CRC Committee, Day of General Discussion on Resources (2007) paras 24 and 25.

<sup>87</sup> General Comment 19, para 28.

<sup>88</sup> General Comment 19, para 34.

<sup>89</sup> General Comment 19, para 29.

<sup>90</sup> Day of General Discussion on Resources (2007) para 47.

<sup>91</sup> See Nolan (2019).

<sup>92</sup> General Comment 19, para 31 (footnotes omitted).

<sup>93</sup> Emphasis added.

<sup>94</sup> See also CRC, Art 18(3).

<sup>95</sup> Tobin and Varadan, 'Article 5: The Right to Parental Direction and Guidance Consistent with a Child's Evolving Capacities' in Tobin (ed), *The UN Convention on the Rights of the Child: A Commentary* (OUP, 2019) 159.

<sup>96</sup> CRC Committee, General Comment 20, CRC/C/GC/20 (6 December 2016) para 18.

<sup>97</sup> For a similar standard to Art 5, see CRC, Art 14(2).

<sup>98</sup> CRC Committee, General Comment 16, CRC/C/GC/16 (17 April 2013) para 8.

<sup>99</sup> General Comment 16, para 42.

<sup>100</sup> eg General Comment 15, paras 79–85.

<sup>101</sup> See CRC Committee, *LH et al v France*, Nos 79/2019 and 109/2019, CRC/C/85/D/79/2019–CRC/C/85/D/109/2019 (30 September 2020), paras 9.6–9.7.

<sup>102</sup> See Duffy, 'Casenote 2021/3: Communications No 79/2019 and 109/2019 LH et al v France and 77/2019 FB et al v France', Leiden Children's Rights Observatory, <<https://www.childrensrightsobservatory.nl/case-notes/casenote2021-3>>.

<sup>103</sup> OC-23/17 (15 November 2017).

<sup>104</sup> *Sacchi et al v Argentina*, CRC/C/88/D/104/2019 (22 September 2021) para 10.7.

<sup>105</sup> General Comment 15, para 86.

<sup>106</sup> Langford, Coomans, and Gómez Isa, 'Extraterritorial Duties in International Law' in Langford et al (eds), *Global Justice and State Duties: The Extraterritorial Scope of Economic, Social, and Cultural Rights in International Law* (CUP, 2013) 51, 58.

<sup>107</sup> See Vandenhole, 'Economic, Social and Cultural Rights in the CRC: Is There a Legal Obligation to Cooperate Internationally for Development?' (2009) 17 *Int J of Children's Rights* 23.

<sup>108</sup> See De Schutter et al, 'Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights' (2012) 34 *HRQ* 1084.

<sup>109</sup> General Comment 16, para 41.

<sup>110</sup> General Comment 5, paras 60–1.

<sup>111</sup> General Comment 19, para 35.

<sup>112</sup> General Comment 19, paras 36–7.

<sup>113</sup> General Comment 19, para 39.

<sup>114</sup> General Comment 16, para 47.

<sup>115</sup> General Comment 5, para 64.

<sup>116</sup> CRC, Arts 10, 13, 14, and 15.

<sup>117</sup> E/CN/4/1985/4 (1985) Annex.

<sup>118</sup> CRC Committee, 'Statement on COVID-19' (8 April 2020).

<sup>119</sup> For an authoritative critique of groups that receive insufficient attention under the Convention, see Freeman, 'Introduction' in Freeman (ed), *The Future of Children's Rights* (Brill, 2014) 3, 8.

<sup>120</sup> CRC Committee, General Comment 8, CRC/C/GC/8 (2 March 2007) para 20.

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