

# The Convention on the Rights of the Child After Ten Years: Success or Failure?

by *Natasha Parassram Concepcion\**

## Origins of the Convention

Prior to the adoption of the Convention on the Rights of the Child (CRC) in 1989, both the League of Nations, in 1924, and the United Nations, in 1959, adopted declarations on the rights of the child. These declarations called on states to recognize certain principles regarding children's rights and take legislative and other measures to enforce them. They were not, however, legally binding and constituted only statements of general principles. In the late 1970s, some states, led particularly by the government of Poland, began to argue for the creation of a new instrument on children's rights that would not only set guiding principles, but also bind states under international law. In 1978, during its 34th session, the UN Commission on Human Rights (UNCHR) stated its concern that children continued to suffer around the world under colonial rule and apartheid regimes, as well as through racism, war, and other forms of aggression, and agreed to strengthen international instruments for protecting the rights of children. In 1978, to commemorate the 20th anniversary of the 1959 Declaration on the Rights of the Child, the UN General Assembly declared the year 1979 as the International Year of the Child, and the UNCHR established a working group to draft a convention on children's rights.

The working group based its project upon the principles enshrined in past declarations, and cooperated with UN member states, specialized UN agencies, non-governmental organizations, and regional inter-governmental organizations in the drafting of the convention. In December 1988, the working group adopted a draft Convention on the Rights of the Child and submitted it to the UN General Assembly for consideration.

The General Assembly adopted the CRC on November 20, 1989, and opened the convention for ratification on January 26, 1990. By September 2, 1990, 20 member states had ratified the CRC, the minimum number of ratifications needed for the CRC to legally enter into force. Since then, 191 nations have ratified the convention, making it the most widely ratified multi-national treaty in existence. Only the United States and Somalia have failed to ratify the CRC. Somalia has failed to ratify the CRC because it does not have a national government capable of concluding an international agreement. The United States has not ratified the CRC because it fears that the convention would allow government interference in family life, and more generally because it feels the CRC would force the United States to relinquish some of its sovereignty in matters relating to the convention.

## The Contents of the Convention

The CRC consists of a preamble and 54 articles, divided into three parts. Part one (Articles 1 through 41) contains the substantive provisions of the convention dealing with the general obligations of state parties and the specific rights granted to children. Part two (Articles 42 through 45) contains provisions on international implementation. Specifically, the convention requires states to submit periodic reports on the measures the states have adopted and on the progress the states have made in recognizing children's rights. Part three (Articles 46 through 54) contains clauses concerning ratification and accession, entry into force, reservations, and amendments.

Although the principles of the convention include a wide range of civil, political, economic, social, and cultural rights, Articles 2, 3, 6, and 12 enshrine the four main principles of the convention. Article 2 focuses on non-discrimination. It reads, in part, "State Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without 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." Under this article, all

children are entitled to equal rights and opportunities.

Article 3 defines the "best interests of the child" principle, the second major principle of the CRC. It states that "In all actions concerning children . . . the best interests of the child shall be a primary consideration." As a result, social welfare institutions, courts of law, administrative bodies, and legislative bodies are all compelled to act in the best interests of the child when taking action involving a child. This principle covers instances when the rights of the child conflict with the prerogatives of parents and guardians and/or with those of the state. Article 3 calls for the best interests of the child to prevail in each of these circumstances.



Although Uganda's primary education initiative increased school enrollment from approximately 2.5 million in 1996 to 5.3 million in 1997, drop-out numbers remain high.

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*Correction:* In Volume 7, Issue 1, the name of Juan Garcés was accented incorrectly. There is no accent on Juan. We apologize to Dr. Garcés.

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The third principle, addressed in Article 6, outlines a child's right to life, survival, and development. Article 6 holds that "every child has the inherent right to life" and "States Parties shall ensure to the maximum extent possible the survival and development of the child." In this sense, the right to life is given further emphasis by ensuring the child's rights to survival and development. The right to development means not only physical health and development, but also mental, emotional, social, cognitive, and cultural development. Children are entitled to certain programs, conditions, and opportunities related to the qualitative aspect of survival. To this end, Article 31 recognizes the right of the child to rest, leisure, play, and participation in cultural life and the arts.

Article 12 defines the fourth principle, the importance of the child's participation and opinions in matters concerning herself. Specifically, the article holds that "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 . . . the child shall in particular be provided with the opportunity to be heard in any judicial and administrative proceedings affecting [him/her] . . ." This article not only provides for the child's participation in matters relating to herself, but it also provides the child's right to freedom of expression. Furthermore, it works to ensure that the child can participate in determining what is in her best interest.

In addition to these defining principles, the CRC also provides the following rights: the right to be free from physical or mental harm and neglect, including sexual abuse or exploitation (Articles 19 and 34); the right to the highest attainable standard of health (Article 24); the right to education on the basis of equal opportunity (Article 28); the right to be free from economic exploitation and from work that may interfere with the child's education or be harmful to her health or well-being (Article 32); the right to be protected against torture or other cruel, inhumane or degrading treatment or punishment (Article 37); and the right to be free from compulsory military service, if under the age of fifteen (Article 38).

To monitor the progress made by state parties in implementing the convention, the CRC, pursuant to Article 43, established the Committee on the Rights of the Child (CRC Committee). The CRC Committee helps states enforce the convention by writing the guidelines that assist states in structuring their own domestic legislation relating to the CRC. The CRC Committee also promotes public accountability by raising the awareness of important issues like child labor and prostitution.

#### Success or Failure?

The decade following the adoption of the CRC witnessed significant gains in the area of children's rights. The rapid growth of special institutions and other organizations specializing in children's rights, for example, has resulted in a powerful voice for raising awareness of children's rights worldwide. Furthermore, state parties are increasingly adopting National Plans of Action, as urged by the CRC Committee, that outline the state's plans to enforce children's rights in health, education, nutrition, and other areas. For example, Costa Rica uses a system called a "social rights audit," not only to monitor and evaluate the country's compliance with the convention, but also to involve children and communities in the process of analyzing the current state of chil-

dren's rights and then proposing solutions to the problems.

Despite the nearly universal ratification of the CRC, the situation of the world's youth casts doubt over actual domestic implementation and enforcement of the convention. In 1999, more than a decade after the CRC was adopted, the United Nations Children's Fund (UNICEF) indicated that the plight of children worldwide has not significantly improved. As of 1999, an estimated 12 million children under the age of five die every year, mostly of easily preventable causes; 130 million children in developing countries, a majority of whom are girls, are not in primary school; 160 million children are severely or moderately malnourished; approximately 1.4 billion children lack access to safe water; and 2.7 billion children lack access to adequate sanitation.

Even though the CRC aims to protect children from economic exploitation and work that interferes with their education, a 1999 Human Rights Watch report estimates that annually 250 million children between the ages of 5 and 14 years engage in some form of labor, usually under hazardous working conditions. Prominent forms of child labor include debt bondage, forced or compulsory labor, and the use of children for prostitution, pornography, and drug trafficking.

UNICEF reports that approximately 300,000 children in more than 30 countries are currently participating in armed conflicts. In many cases, the armed groups forcibly recruit children. Other



UNICEF/4761/John Chitasson

Boy-soldiers participate in a drill at the Karen group headquarters in Burma.

children, however, lack access to food and shelter and join armed forces out of desperation. Some armed groups subject children to grave forms of violence, using the children as human mine detectors, spies, or in suicide missions and front line combat. For example, Human Rights Watch, in a 1999 article entitled "Promises Broken" asserts that in Colombia, government-backed paramilitaries, as well as guerilla forces, have used children to collect intelligence, make and deploy mines, and serve as advance troops in ambush attacks. Some of these children are as young as eight years old. Although the CRC

has highlighted children's rights and works with states to enforce these rights, reality suggests that states have not followed through on their commitments to the CRC.

#### Conclusion

The ten-year anniversary of the CRC marks an important point in the history of children's rights. Never before have the rights of children been so widely recognized as they are today. The challenge for states, though, is to take stronger measures to implement the provisions of the CRC to further protect and fulfill the promises made to the children of the world. On January 21, 2000, the international community came one step closer to securing the rights promised to all children under the CRC when a UN Working Group developed an Optional Protocol to the CRC, establishing 18 years as the minimum age for participation in armed conflicts. Although the protocol sets 18 as the minimum age for recruitment, volunteers under this age are still allowed to join the armed forces. State parties to the protocol must not consider this document the end of the fight to protect child soldiers. Enforcement of the CRC also is of paramount importance to provide the medical care, counseling, vocational training, and other services that child soldiers need to reintegrate themselves into society. The protocol is a commendable step, but should not be the final one, in the struggle to enforce children's rights. ☉

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