

## False Promises

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On 20 November 1989, the General Assembly adopted a landmark treaty called the Convention on the Rights of the Child (CRC). The product of ten years of negotiation and controversy, the convention was hailed by UN officials as a “Magna Carta for children.”

Javier Perez de Cuellar, then Secretary General of the UN, described the agreement as “visionary” and “timely,” and said it would give a child ultimate rights as an individual in society.

Echoing this sentiment, Joseph N. Garba, then president of the General Assembly, proclaimed that “the rights of the child have now gone from a declaratory statement of purpose into what will become a binding piece of legislation.”

This all-encompassing treaty has since been ratified by every nation in the world but Somalia and the U.S., making it the most-ratified international treaty in history. The U.S. has faced a continual stream of international criticism for failing to ratify it. The treaty is so obviously in the best interests of children, proponents argue, how could the U.S. fail to approve it?

Indeed, the CRC promises sweeping protections for those who are at once the most precious and most vulnerable citizens of the world. Rejecting such an accord should give any nation pause. Yet a close look at the CRC reveals many unacceptable elements. These elements twist an otherwise praiseworthy treaty into one that intrudes on countries’ national sovereignty and endangers children by interfering with their parents’ rights to direct their upbringing.

### What the Convention Says

The CRC is a binding agreement that specifies a wide variety of rights and protections for children. At its heart are four core principles, which determine how its specific provisions should be interpreted:

- 1) *Nondiscrimination* (Art. 2): Governments must ensure that all children within their jurisdiction enjoy their rights, “irrespective of the child’s or his or her parent’s or legal guardian’s race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth, or other status.”
- 2) *Best interests of the child* (Art. 3): When authorities (including courts of law, administrative authorities, legislative bodies, and both public and private social welfare institutions) make decisions that affect children, the best interests of children must be a primary

consideration. According to the Office of the UN High Commissioner for Human Rights, “This is a fundamental message of the convention, the implementation of which is a major challenge.”<sup>1</sup>

3) *The right to life, survival, and development* (Art. 6): These rights should be ensured “to the maximum extent possible.” The term “development” is meant in a broad sense, including not only physical health, but also mental, emotional, cognitive, social, and cultural development.<sup>2</sup>

4) *The views of the child* (Art. 12): Children must be free to express opinions in all matters affecting them, and those views should be given due weight “in accordance with the age and maturity of the child.” Children have the right to be heard and to have their views taken seriously, including in any judicial or administrative proceedings affecting them.

The CRC elaborates those principles with more specific rights and protections. The rights include:

- “freedom of expression, [including] freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child’s choice” (Art. 13)
- “freedom of thought, conscience, and religion” (Art. 14)
- “freedom of association and . . . freedom of peaceful assembly” (Art. 15)
- freedom from being “subjected to arbitrary or unlawful interference with his or her privacy, family, home, or correspondence, [or] to unlawful attacks on his or her honor and reputation” (Art. 16);
- the right to “benefit from social security, including social insurance” (Art. 26); and
- the right to “rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts” (Art. 31).

In addition to guaranteeing the above rights, nations that sign the CRC bind themselves to:

- ensure that a child “shall not be separated from his or her parents against their will” except by competent authorities for the child’s well being (Art. 9)

- protect children from “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parents, legal guardians, or any other person who has the care of the child” (Art. 19)
- “make primary education compulsory and available free to all” (Art. 28)
- protect children from “economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral, or social development” (Art. 32)
- protect children from “all forms of sexual exploitation and sexual abuse” (Art. 34)
- “take all appropriate . . . measures to prevent the abduction of, the sale of, or traffic in children for any purpose or in any form” (Art. 35)

Countries that sign and ratify the treaty are expected to take “all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present convention.” This means that countries must not only bring all their laws and regulations into line with the convention, but they must take all appropriate measures to enforce those laws and regulations.

Compliance with the treaty is monitored by the Committee on the Rights of the Child. This eighteen-member body is made up of “experts of high moral standing and recognized competence in the field covered by this convention.” Members of the committee have included people with backgrounds in human rights and international law, juvenile justice, social work, medicine, journalism, and governmental and nongovernmental work.

Every five years, each nation that signs the treaty is required to report on the steps it has taken to implement the CRC and on the progress it has made toward attaining its goals. After the committee reviews the government’s report and meets with its representatives, it makes suggestions and general recommendations based on the information it receives.

The UN currently has no formal mechanism for enforcing compliance with the treaty. Nonetheless, the reporting process alone gives the committee substantial influence. Poorer nations that fail to comply with the committee’s recommendations may be subject to enforcement by richer nations that may withhold important aid or benefits for non-compliance.

The reporting procedure also provides a basis for enforcement through a nation’s courts. The government reports and committee recommendations give citizens and interest groups legal standing to sue their governments and force compliance with the convention.

Thus, the convention is clearly more than just a piece of paper.

### Why the Convention is Unacceptable

The CRC is remarkable for the breadth of its guarantees. Many of its provisions warrant the praise they have been given. Yet the CRC also has many important flaws—flaws that undo much of what is good in the treaty. These flaws are so serious that signatory nations should rethink their commitment to it. Among the CRC’s most distressing flaws are the following:

#### *Allows Excessive Breadth of Interpretation*

One major flaw is that the CRC allows committee members too much room to impose their own ideological agenda.

For example, although the CRC grants children the right to seek and receive any information, the CRC allows restrictions “as are necessary for respect of the rights or reputations of others; or for the protection of national security or of public order, or of public health or morals.” The committee has taken this as a mandate to decide what kind of information children may—or may not—be exposed to.

Thus, in a meeting with representatives of Belize, a committee member wanted to know: “Were there provisions for protecting children against information that could be considered harmful to their moral development or provide exposure to acts of violence? What was being done to reduce the negative impact of certain technological innovations, such as video films and electronic games? Were there any procedures for censorship?” In its recommendations to the U. K., on the other hand, the committee chastised the government for allowing parents to withdraw their children from sex-education classes if the parents disagreed with what was being presented.<sup>3</sup>

This breadth of interpretation can be seen in other areas as well. In the area of discipline, the committee has interpreted the mandate to protect children from “all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation” as an authorization to prohibit any form of corporal discipline, “however light, in schools, at home, and in institutions.”<sup>4</sup>

The committee’s attitude toward Palau is particularly revealing in this regard. When representatives of Palau were asked why their nation had not passed laws prohibiting corporal punishment, the representatives replied that while the adoption of legislation specifically to prohibit corporal punishment in schools and in the family would be desirable, it must be debated in the community. Even during the discussion of the initial report, many parents had voiced concern that too many standards and laws restricted them from properly disciplining their children. Palau had a very traditional, Christian society, in which the saying ‘spare the rod and spoil the child’ was still widely invoked. It would take some time to bring about a meaningful change in attitudes.<sup>5</sup>

Their response fell on deaf ears. In its final report, the committee said it was “concerned . . . that corporal punishment is still practiced and widely accepted within the state party and that domestic legislation generally does not prohibit and eliminate its use in homes and schools.” It recommended that the government “take all appropriate measures, including of a legislative nature, to prohibit and eliminate all forms of corporal punishment in schools and in homes. The committee further suggests that awareness raising and education campaigns be conducted to change public attitudes.”<sup>6</sup>

Precedence is given not to religion, culture, or the rights of parents, but to the committee’s ideological preferences—contrary to fundamental principles repeatedly affirmed in such documents as the Universal Declaration of Human Rights; the International Covenant on Economic, Social, and Cultural Rights; and the International Covenant on Civil and Political Rights.

*Gives the Committee on the Rights of the Child  
Virtually Unlimited Jurisdiction*

Another major problem is that the CRC gives the committee a virtually unlimited mandate to insert itself in the affairs of a nation. It can demand wholesale changes in a country’s legal system, education system, and social-welfare institutions—whatever is necessary to bring the country into line with the convention.

Nor is this necessarily mitigated by the UN’s lack of an enforcement mechanism. A good deal of enforcement can take place outside the UN’s formal machinery. In fact, the lack of an enforcement mechanism is what gives the committee its broad reach. Any enforcement mechanism approved by the General Assembly would include provisions for due process and appeals—and would thereby limit the committee’s discretion.

To appreciate the committee’s reach, it may help to list some of the matters the convention specifically places under its jurisdiction: breast-feeding, nutrition, hygiene, children’s access to healthcare and legal counseling, children’s social, spiritual, moral, physical and mental well being, environmental pollution, sex education, parental discipline, family planning, children’s leisure, play and recreational activities; the media, children’s books, social security, immigration policy, and other matters.

The committee has further expanded its reach by liberally interpreting Article 3, Paragraph 1 of the CRC, which states the core principle that “in all actions concerning children, . . . the best interests of the child shall be a primary consideration.” In the view of committee members, the term “best interests of the child” means not merely protecting children from harm, but helping them exercise their rights to fullest possible extent.

In a meeting with representatives of Belize, for example, one member “objected to the use of the word ‘welfare’ in the

[country’s] report, as opposed to the ‘best interests of the child,’ which was the language of the convention. ‘Welfare’ was a somewhat patronizing term that implied mere care and protection, without consideration for the interests of an individual with rights.”<sup>7</sup>

This view was echoed in the committee’s official concluding observations, which contrasted “the traditional view of children as mere objects of care” with “an understanding and recognition of the child as a subject of rights.” The latter was the only acceptable view.

Thus, the committee is able to weigh in on matters in which there is little or no prospect of harm. For example, in a meeting with representatives of Lesotho, one committee member raised allegations that “Children do not have the freedom to choose where they would like to worship; it is expected that they go to the same church as their family. If parents change churches, children must move with them even if they like the church they have been attending.”<sup>8</sup>

With this broad an interpretation of the convention, it is hard to imagine anything that the committee would consider outside the reach of its authority.

*Gives Undue Influence to Special Interests*

The CRC requires the Committee on the Rights of the Child to “establish its rules of procedure.” As part of its reporting process, the committee appoints from among its members a working group that meets before each of the committee’s sessions. The working group reviews the governments’ reports, as well as any “complementary reports” filed by NGOs. NGOs have consultative status at the UN. Examples of such organizations are International Planned Parenthood, International Save the Children Alliance, World Assembly of Youth, the American Psychological Association, and the Center for Reproductive Law and Policy.

The end result of the working group’s deliberations about a given country is a “list of issues” that will be uppermost in the committee’s discussions with that country’s government. The list of issues is sent to the government, and the government is invited to reply in writing before its meeting with the committee.

Although this seems a reasonable procedure, there’s a troubling catch—Not only are these working-group meetings closed to government representatives and the public, but the committee may invite NGOs to join these deliberations.<sup>9</sup>

This arrangement is ripe for abuse. It essentially allows groups that have a stake in the committee’s decisions to play a role in those decisions. Imagine the plaintiff in a lawsuit being able to meet privately with the jury before the trial, or a businessman joining a legislative committee to weigh a new law that affects his business. Such obvious conflicts of interest would never be tolerated in American law or politics. Neither should they be tolerated at the UN.

### *Undermines the Legitimate Role of Parents*

In addition to serious procedural problems, the convention's provisions undermine the role of parents. As was mentioned earlier, the convention grants children the right to privacy; the right to "freedom of association and freedom of peaceful assembly;" and the right to "freedom of expression, [including] freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice."

Although the convention qualifies these rights by stipulating that governments "shall respect the responsibilities, rights and duties of parents," echoing the UN's own founding documents and principles, this provision is invariably trumped by that versatile catchall—"the best interests of the child."

As the committee's reports and recommendations show, the rights and duties of parents are consistently given the lowest priority. Thus, in many of its meetings and reports, the committee expresses "concern" that many countries do not allow minors to seek medical, psychological, or legal counseling without parental consent.

This attitude was aptly expressed in a meeting with representatives of Belize, when one of the committee members stressed the importance of effective legislation so that medical and psychological counseling regarding drugs, sexual matters, and AIDS could be given to children without parental involvement and of a monitoring mechanism to ensure that they were not exploited by charlatans. Ways should also be found to encourage children to confide in their parents where that was feasible.<sup>10</sup>

Here the presumption is that parents are not a resource, but a problem to be circumvented. The obvious role of parents as a frontline defense for their children is rejected in favor of some unspecified "monitoring mechanism."

Such a mindset harms children in many ways. For one thing, it harms them morally. By allowing privacy, self-expression, access to information, and freedom of association to trump parents' rights, it enables children to hide their activities from their parents. Indeed, this seems to be exactly what the committee intends—especially when drugs, sex, HIV/AIDS, and abortion are involved. This not only encourages children to deceive their parents, but it also loosens the bands of accountability, making children more likely to do things that they know are wrong.

Among the Navajo people of North America, one of the worst accusations one can level at a thoughtless, unprincipled person is that "he acts as if he had no relatives." A person with no relatives, the Navajo believe, has no bonds of care or accountability—and thus no concern for the grief or shame his behavior might bring on those he loves. He thus acts without control. By weakening these bonds of account-

ability, the convention weakens important restraints on selfish, hurtful behavior. Allowing children to hide their activities also cuts the children off from their parents' guidance and protection.

In America, the consequences of this can be seen everywhere. We can see them, for example, in the many news reports of children and adolescents who are lured by pedophiles into secret rendezvous—and then raped and abused.

In March, an eleven-year-old Michigan girl was raped by a man she had met in an Internet chat room. The man lured the girl into phone conversations, clandestine meetings, and finally a visit to his home—where he tied her up, put a pillow over her face, and raped her.<sup>11</sup>

In April, a New York school teacher was arraigned on six counts of statutory rape and sodomy for sex with minors. That was in addition to 138 counts of sexual misconduct with children. On his computer, police found files on more than one hundred girls that he had either had sex with or was still working on.<sup>12</sup>

One of the things pedophiles try to exploit is children's sense of shame and their fear of being found out. Indeed, the eleven-year-old Michigan girl, though traumatized and in tears after being raped, was reluctant tell her mom what had happened.

Instead of reinforcing the estrangement of children from their parents, the committee should empower parents to overcome such barriers. The presumption should be that parents are ready and willing to aid their children—not to reject and abuse them.

### **Action Items**

Although the CRC has many desirable elements, the bad outweighs the good. For this reason, signatory nations should review their commitment to the convention and consider whether they should still abide by all its provisions—especially the reporting system, which gives undue influence to special interest groups via the courts.

*Citizens of signatory nations should:*

- contact appropriate officials in their governments, urging them not to cooperate with any UN policies that violate their national sovereignty or interfere with the right of parents to direct the upbringing of their children
- inquire whether their government is pressuring other countries to submit to UN policies that violate these countries' national sovereignty or interfere with the right of parents to direct their children's upbringing

*UN delegates should:*

- propose measures stipulating that all treaty bodies, such as the Committee on the Rights of the Child, strictly adhere to the fundamental principles speci-

fied in the UN Charter and the Universal Declaration of Human Rights

- oppose any language in future proposals that deviates from those principles

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NOTES

1. Office of the United Nations High Commissioner for Human Rights, Fact Sheet No.10 (Rev.1), "The Rights of the Child," Geneva, Switzerland, 2000.

2. CRC Committee, 8th Sess., *Concluding Observations of the Committee on the Rights of the Child: United Kingdom of Great Britain and Northern Ireland*, CRC/C/15/Add.34, 15 February 1995.

3. *Ibid.*

4. CRC Committee, 16th Sess., *Concluding Observations of the Committee on the Rights of the Child: Australia*, CRC/C/15/Add.79, 10 October 1997.

5. CRC Committee, 26th Sess., *Concluding Observations of the Committee on the Rights of the Child: Palau*, CRC/C/15/Add.149, 26 January 2001.

6. *Ibid.*

7. CRC Committee, 20th Sess., *Summary Record of the 512th Meeting: Belize*, CRC/C/SR.512, 21 January 1999.

8. CRC Committee, 26th Sess. *Summary Record of the 686th Meeting: Lesotho*, CRC/C/SR.686, 24 January 2001.

9. Office of the United Nations High Commissioner for Human Rights, Fact Sheet No.10 (Rev.1), "The Rights of the Child," Geneva, Switzerland, 2000.

10. CRC Committee, 20th Sess., *Summary Record of the 512th Meeting: Belize*, CRC/C/SR.512, 21 January 1999.

11. Associated Press, "Man Lures, Rapes Eleven-Year-Old Girl He Met on Internet," *Associated Press State & Local Wire*, 22 March 2001.

12. Luo, Michael. "The Correnti Files," *Newsday*, 10 April 2001, p. A07.