

COMMITTEE ON THE RIGHTS OF THE CHILD

General debate on the item "Realization of the right of the child in early childhood"

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At its Special Session on children in 2002, the United Nations General Assembly adopted an action plan¹ making it mandatory for Member States *inter alia* to "formulate and implement national programmes and policies for the development of children in early childhood in order to promote the physical, social, emotional, spiritual and cognitive development of children".

The final document of the 27th Special Session of the General Assembly, A/RES/S-27/2,¹ entitled "An appropriate world for children", in its paragraph 36 states: "We are resolved to break the generational cycle of malnutrition and ill health, endeavoring to act so that all children begin life in conditions of safety and good health, providing all communities with access to primary health care, systems which are effective, fair and stable, guaranteeing access to information and consultation, providing appropriate services for the supply of water and sanitation, and promoting healthy life styles among children and adolescents". It then continues, as part of the Action Plan, to set out objectives; and, in its paragraph 37, detailing strategies and measures which are suggested to achieve these goals. (Annex I)

Then the Committee on the Rights of the Child decided at its 33rd session to devote its general debate day in 2004 to the item "Realization of the rights of the child in early childhood"². (CRC/C/137 (PART OF FUTURE))

In its convening document for this meeting the Committee states that "Having since 1993 considered the situation of the rights of the child in almost all countries, it observed that the rights of babies and small children are overlooked all too frequently". And it adds that this happens "despite the broadly recognized fact that early childhood is an essential period for the appropriate development of small children and that opportunities lost during those first years cannot be compensated in subsequent stages of the child's life."

As for the link between the implementation mode and the scope of the Convention it points out that "it is still believed that these children can only benefit from the right to protection enshrined in the Convention". And it adds that "This may also apply to all rights enshrined in the Convention, in particular the right to survival, to development, to protection and participation."

¹ "An Appropriate World For Children", final document of the twenty seventh extraordinary session period of the General Assembly, A/RES/S-27/2, § 36 e). GE 04-40-420 (S) 260204 010304

² According to article 75 of its provisional rules, the Committee has the possibility to dedicate one or more sessions of its regular periods of sessions to a general debate about an specific article of the Convention or to a related subject, in order to understand the contents and the consequences of the Convention.

This is the context that calls on us to meet in Working Group 1 in the search for the practices appropriate to an early age and inviting us to consider some essential aspects of survival, protection and development of the child along two main tracks:

- a) To guarantee the right of small children to survival and development, in particular the right to health, nutrition and education
- b) To guarantee the right to rest, recreation and play

From this standpoint, in the consideration of the item there are two relevant aspects which we should highlight:

- The partial and fragmentary nature of the realization of some rights set out in the Convention and emphasis on protection aspects over and above participatory aspects or the right to survival and development
- The existing gap between commitments assumed at the General Assembly through the document “A better world for children”, which includes goals and modalities for action by all Member States and results obtained
- The need to review, especially as regards health, sectoral and social behavior spanning moral values as well as the implementation of proactive programmes

On the basis of this observation we shall delve into the item progressively, beginning with a general reference to the standard setting framework of human rights and the Convention on the Rights of the Child, in particular. We shall seek to analyze the gap existing between commitments and realities in the area of compliance with the Convention and the role of the state as guarantor of this compliance. We shall suggest some areas of consolidation of social or sectoral conduct.

Human rights are:

- a) Universal, inherent to all human beings and are based on respect for the values and dignity of each individual or member of a community, group or society. They pertain to all human beings without distinction as to gender, age, ethnic group, creed, social class or any other consideration. Regardless of the place or nation where the individual lives, this individual cannot be discriminated against under any circumstances whatsoever.
- b) Mandatory, in so far as States that ratify international human rights instruments assume the obligation to be accountable to their citizens for compliance with these instruments.
- c) Indivisible in two senses. Firstly, there is no hierarchy among the various types of rights, and they are equally necessary to a life of dignity. Secondly, it is not possible to suppress or breach some rights for the purpose of promoting others.

The Convention on the Rights of the Child (CDN)

All human rights conventions apply to children. However, the international community has deemed it necessary to draw up a separate convention which, given children's special need for care and protection, should encompass all aspects of their life and should place special emphasis on the fact that children are subjects of these rights.

In its preamble the Convention points out:

“...Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood **is entitled to special care and assistance,**

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, **should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,**

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations and, in particular, in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,“

The articles of the Convention begin by pointing out that it applies to all persons under the age of 18 and defines the obligations of the state in asserting in its *article 2*

- “1. States 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 opinions, national, ethnic or social origin, property, disability, birth or other status.“
- “2. States Parties shall take all appropriate measures 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.**“

The Convention is based on four general principles which go into the making of the framework of the Convention of the Rights of the Child:

- **Non discrimination (article 2). All rights apply to all children without exception.**
- **The gender perspective. “Gender constitutes a central part of personal identity. The vision of and values regarding gender in a particular society are internalized**

and at the same time lead to subsequent perceptions, attitudes and forms of conduct“³

- **The paramount interest of the child. This is the cornerstone of the philosophy underpinning the Convention, encompassing all decisions affecting boys and girls.**
- **The right to survival and development (article 6). States Parties recognize that every child has an inherent right to life. States Parties shall ensure to the maximum extent possible the survival and development of the child.**⁴
- **Participation (article 12). Boys and girls have the right to be involved in all matters affecting them.**

When a State ratifies the Treaty, it assumes the legal obligation to implement the rights recognized therein.

In this sense states are the guarantors of compliance with commitments stemming from the Convention.⁵

The implementation of the Convention

In the convening document for the present meeting, the Committee pointed out the partial and fragmentary nature of the realization of some of these rights set out in the Convention and the emphasis on protection aspects over participatory aspects or the right to survival and development along with the gap existing between commitments assumed at the General Assembly through the document “A better world for children” which includes the goals and means of action by member States and results obtained.

As regards the implementation of the Convention the convening letter refers to an approach, generally speaking, which makes the realization of these rights rather fragmented. Thus, it points out: “Paragraph 2 of article 6 of the Convention guarantees the right of all children to survival and development. This provision may be applied globally only if there is compliance with the other provisions of the Conventions, in particular the right to health, appropriate nutrition and education (articles 24, 28 and 29).” And in this sense it adds: “States Parties to the Convention shall ensure that all children have access to health care and appropriate nutrition from their early childhood, as stated in article 24, to give them a healthy start in life. In this context, breast feeding, access to safe drinking water and appropriate nutrition are vital.”

In fact, the systematic observation of the implementation of social policies reveals that these social policies, far from being with human rights in mind, easily generating fragmented responses, which emphasize the protection aspect. This is often a decision prompted by emergencies. As regards our country, the Committee made relevant

³ Save The Children op.cit.

⁴ The concept of child development is a key feature of article 6. It means that child's age and maturity are to be considered when defining his or her level of self-determination and freedom. Save The Children op.cit.

⁵ Human rights are related to duties, responsibilities and obligations. Guarantors are the actors that hold the collective responsibility to respect human rights. They are responsible for compliance with these rights. Whenever a right is breached or not sufficiently protected, there is always a person, or institution, who has failed to fulfill a duty.

observations (Annex II) on the basis of the analysis of the official report submitted by the Republic of Argentina and the Special Meeting devoted to its evaluation. These observations should be the guidelines in the implementation of public policies in the area of childhood and adolescence. The Committee highlighted the transparency, truthfulness and objectivity of the Argentine report produced in April 2002 in the midst of socio-political crisis, which was far from the idyllic image presented earlier in the previous report in 199...

The current socio-economic context for the realization of human rights

Countries in the developing world, within a significant cultural homogeneity, present common denominators which often have a dramatic impact on childhood and adolescence. The high indices of maternal and child mortality and the death rate among children under five years of age, the still low percentages of immunological coverage, difficulties in access to healthcare, with a consequent increase in the risk of pregnancy and of low monitoring of growth and development of the child in his or her first years, inadequate promotion of breast feeding, a deficit in appropriate nutritional supplies and a high percentage of the population without drinking water services, constitute high vulnerability indicators in the exercise of the right of the child in early childhood.

It is in this context where we should submit guidelines and an assessment framework which influence the design of an effective response in keeping with the obligations expressed in treaties and covenants.

Main guidelines for action

Overcoming the existing gap between commitments and realities and the full realization of human rights presuppose a review of social and political practices, above and beyond economic reform in the search for work and fair treatment, designed to make public policies effective and to ensure that there is a holistic approach in their statement and implementation and also to ensure the participation of various actors of society where the population and especially children and their families are the protagonists and main actors.

In this context, there are three fundamental value components to design that response:

- **The design of social policies bearing human rights in mind**
- **The strengthening of citizenship as an expression not just of the individual but also as an organization of civil society**
- **The development of community health concepts**

The design of social policies bearing human rights in mind

In ratifying human rights conventions, covenants and treaties the state assumes compliance with the mandates stemming therefrom and its institutions, its planning systems and its budgets and in relation to the citizenship. Hence, it must develop public policies bearing human rights in mind.

We must draw a distinction between the needs approach and the human rights approach in the development of public policies as well as in the planning of the organizations of civil society. A needs approach is in line with a vision designed to solve specific problems which require immediate rapid response. However, at the same time, emphasis is placed on

specifics, and this turns the citizen into a passive subject who must be looked after by outsiders, as it were. Instead, the human rights approach enables us to develop a vision of citizenship where the citizen is the subject of rights. *“Through a human rights approach, States that have ratified international human rights rules will have a grater chance to guarantee compliance whereas, the other actors of society will be able to carry out their function as monitors of the State and contribute with the responsibility devolving upon them.”*⁶

*... “Many rights have developed on the basis of needs, but a human rights approach adds moral and legal obligations in addition to responsibility” ... “a human rights approach urges and empowers the holders of these rights to demand them, which means that they are not seen as an object of charity (as indeed may be the case of the needs approach) but as individuals demanding their legal rights”.*⁷

This vision must be complemented with that of social citizenship where persons are organized in institutions, groups or various group patterns in civil society for specific purposes of participation and exercise of citizenship, so as to be protagonists in the creation or recognition of a right and in the search for its proper realization.

In this sense, the unity of meaning and action established locally trough the strengthening of social organizations will then be able to find in the principles and provisions of human rights treaties a practical and useful tool for effective dialogue with public bodies in the design of public policies and the development of plans and programmes from a standpoint enabling their development and assessment within human rights in mind.

The strengthening of citizenship as an expression not only of the individual but also of organizations in civil society.⁸

New social actors have, in the last twenty years, joined the complex political and institutional stage. Over this period, a very special place belongs to various groupings in civil society and also religious groups, direct interpreters of the growing expectations of citizen participation, of legitimate protagonism in the decisions of the State and the effective exercise of human rights.

In this context, the proposals for local development based on concepts of citizen participation, equality of opportunity, opening up of State organs and the promotion of the regional economy become particularly vibrant.

It is essential, then, to establish a hierarchy and to resituate the concept of citizenship within the strategies of development and the strengthening of democratic life within a community. It is instructive to recall the definition provided by Gabriel Kessler, who maintains: *“Citizenship understood as a set of legal, economic and cultural practices which define a person as a competent member of a society and which, for its legality and*

⁶ Programming Children's Rights, Training Guide, Save The Children, Sweden, July 2004

⁷ idem, above.

⁸ CODESEDH, Citizenship's participation: challenges to dialogue between civil society and the State. "Introduction and comments", Norberto Liwski, President of CODESEDH, Buenos Aires, August 2004

legitimacy draws on the entitlement to human rights and consequently configures the flow of resources accessible to various persons and social groups”.

In expanding this concept we would like to highlight universal social citizenship, which according to the description provided by A. Minujim and E. Cosentino is “a minimum threshold of rights and guarantees ensured for one and all”. Likewise, the socio-economic scenario of our times, presents us with sectors of the community which, despite living under democratic regimes, in other words with equal rights and duties, exercise their citizenship differently. These conditions, comparable to the risk of social exclusion, are described by Guillermo O’Donnell as low-intensity citizenship.

Reflecting Latinamerican experience it is important to stress the contribution of the Arias Foundation for Peace and Human Progress of the Republic of Costa Rica, which states: ... *“Organized citizenship demands an expansion of democracy going beyond the merely formal aspect and moving from representative democracy towards participatory democracy. To this end, it is essential to create a culture of participation where state public spaces are open to citizens and where organized citizenship learns to take part exercising its citizen participation rights and duties.”*

Latinamerican democracies as a whole are experiencing a profound crisis of confidence after 25 years of progress towards legally elected civilian governments. Given economical social inequalities, doubts, impatience and civil instability grow, jeopardizing democracy as a promoter of human rights.

A recent UNDP⁹ report recognizes that *“8. The citizen and the organizations of civil society play a central role in the building of democracy, in the monitoring of the government, in the expression of demands and in the strengthening of pluralism which all democracies require and need.*

They are the relevant actors of citizen democracy, their role is complementary to that of the traditional political actors of democracy. Despite difficulties and hurdles involved in the acceptance of civil society as a forum of participation and strengthening of democracy its importance in the democratization of Latin America should be clearly recognized.”

In this sense, politics must not only recover its central contents for the move to citizen democracy to become viable, but must also carefully reflect on its incomplete task, assuming the demands of a society which organized itself to demand, to monitor and to propose.

“Currently, we require alternative forms of representation which, without replacing traditional forms (political parties, elections, Parliaments), will complete and strengthen them, meeting new needs and the peculiarities of excluded or underrepresented sectors and the need for political involvement which generates the healthy, sound and growing expression of diversity and the essential citizens’ repossession of spaces for building a democratic will.”

⁹ UNDP. Report: *La democracia en América Latina: Hacia una democracia de ciudadanas y ciudadanos*. (185. Hacia la democracia de la ciudadanía) Lima, Perú. April 21st, 2004.
<http://democracia.undp.org/Default.Asp>

Participatory democracy in the management of policy is co-management between the State and citizens' movements. In this context, the role of the State must be redefined enabling social monitoring and ensuring channels for the direct participation of citizens, in particular, the most vulnerable among them in the management of public affairs, respecting the autonomy and diversity of organizations in civil society and dynamically integrating the economic social, cultural and environmental aspect of development. Consequently, greater citizen participation will lead to the achievement of areas for the exercise of human rights and improve conditions of governance, for governance improves when it is based on citizenship which is ultimately the source of its representativity.

Community health, a fundamental human right¹⁰

The definition of community health is based on the principles mentioned above, that is social policy with a human rights and citizenship approach.

In this context, it appears necessary to redefine health, approaching as a fundamental human right, overcoming the traditional concept of "state of well being" or "absence of disease". This definition does not involve serious contradictions in developed countries, in that well being is specific and attainable possibility. It is, however, very difficult for developing countries to integrate that definition into their social reality, especially among popular sectors.

This ideas of organization, movement and work, create a dynamic link between needs and their transformation into exercised and recognized rights. To this end, training is essential, training linked to specific technical aspects of problems as well as training designed to develop a capability for organization and action.

Usually, here we identify potential conflicts between technical skills and their language and means of expression and communication, and cultural realities, as well as the needs of people, of families and of organizations. This entails an effort to create a meeting space, with a common language and with respectful of the culture, traditions and skills of the population.¹¹

This distance is usually visualized even in the health care services, which despite their shortcomings harbour habits and rules which cast the care seekers, in this case the mother and the child in the role of patient, passive and a receptor of knowledge and care, not just on the part of the professional but also on the part of the very structure, the establishment.

In this construct, the third component of the meeting and, of course, its main protagonist, is the State as a guarantor of the common good and especially as a guarantor of international Human Rights Treaties and Covenants.

Thus, we define a health-generating space, from the definition of combat against whatever affects health and where sustainable process is based on the full validity of human rights, where health has its own place, integrated into the whole, community organizations and their network (organized community, free popular organizations) and the State as a

¹⁰ Salud Comunitaria, Derecho Humano Fundamental, El Rol de las Organizaciones Comunitarias y el Estado. Norberto Liwski, CODESEDH, Buenos Aires.

¹¹ Julio N. Bello; Martín Delellis, Modelo Social de Prácticas de Salud, Editorial Buenos Aires, 1988. There is an increasing gap between technical knowledge and popular knowledge. It is habitual that, in spite of its potential contribution in terms of preventing diseases, promoting or recovering health, established social structures do not value or make advantage of the potential contributions of the population.

guarantor of social policies built and defended with human rights in mind, in an affirmation of social justice as a genuine expression of the common good. In this edifice, a fundamental role will be played by effective community participation and the applicable tools are constituted by the strategy of primary health care, by democratic education, an education linked to the language and to the needs of the population and its organizations as well as participatory planning. It is in this context where the family, integrated into its neighborhood institutions, acquires, despite its shortcomings, its own protagonism insofar as it participates through its members and its organizations in the definition of a space to affirm its rights, a space which, generated by local reality, tends to be holistic and to overcome protection aspects, to integrate participation, development and survival, where the paramount interest of the child will be not just a theoretical expression but a necessary component of organization and work.