Children and Their Right to Enjoy Health: A Brief Report on the Monitoring Activities of the Committee on the Rights of the Child

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By signing on to the Convention on the Rights of the Child (CRC), 191 out of 193 states recognize the right of the child to the enjoyment of the highest attainable standard of health (Article 24 CRC). These states have committed themselves to the full implementation of this right and to the undertaking of appropriate measures aimed at specific efforts, goals, or achievements. In this commentary I shall try to report on the activities of the Committee on the Rights of the Child (hereafter: the Committee) regarding monitoring of the implementation of Article 24 of the CRC. I will focus on the major activity of the Committee—the review of the reports submitted to it by States Parties. This activity, meant to examine the progress made by States Parties in the implementation of the CRC, generates Concluding Observations and Recommendations addressed to the State Party (see Articles 43 and 44 CRC). I will also include other activities of the Committee concerned with the full implementation of Article 24 of the CRC. Given space constraints, I will focus on the highlights of the Committee's monitoring activities and seek to acknowledge some of the difficulties the Committee has found in doing this work.[1]

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Article 24 and the Committee's Holistic Approach

The right to the enjoyment of the highest attainable standard of health is not exclusively meant for children. Other human rights instruments such as the International Covenant on Economic, Social and Cultural Rights (ICESCR, Article 12) contain similar provisions concerning the right to the highest attainable standard of health.[2] But Article 24 of the CRC has some unique elements: it is the most elaborated and specific provision on the right to health and includes a call for the abolition of traditional practices prejudicial to the health of children, as well as for special attention to health issues particularly relevant to developing countries.[3]

When reviewing the progress made in implementation of Article 24, the Committee takes into account other articles of the CRC. In other words, Article 24 is understood in the context of the CRC as a whole. This means, for example, that the Committee raises governmental obligations in relation to such issues as budget allocations (Article 4 CRC) and the role of the best interests of the child (Article 3 CRC) when dealing with waiting lists for medical treatment, the extent to which the child's evolving capacities and the right to express their views and to be heard (Articles 5 and 12 CRC) are taken into account when medical decisions are made, as well as discrimination against minority children, children in rural/remote areas, disabled children, and institutionalized children in the area of access to basic health care services (Article 2 CRC).

This holistic approach implies that the observations and recommendations the Committee makes regarding health are not limited to implementation of Article 24. For example, in a number of industrialized countries decentralization is an important feature of the responsibility for and the organization of various social services, including health care. But this delegation of authority to local authorities may—particularly when it is not accompanied by sufficient budget allocations—endanger the availability of or access to social and health care services for the most vulnerable groups of children, such as the children of poor and/or single-parent families.[4] Similar concerns exist in relation to

such issues as infant mortality, immunization, and breast-feeding. In general, medical care for children is reasonably high on the political agendas of most States Parties. Efforts in the area of basic health care—particularly for children less than six years old—are supported by UNICEF, the World Health Organization, other UN bodies, and many nongovernmental organizations. But sadly, 10 million children under five years of age nevertheless die every year of preventable diseases and malnutrition. Infant and under-five mortality is still very high in too many countries. The Special Session on Children of the General Assembly of the UN will hopefully result in increased attention to these and other health problems. It is suggested in the Draft Outcome Document for this Special Session that states should commit themselves to such goals as a one-third reduction in infant and under-five mortality. The achievement of these and other goals set forth in the Outcome Document of the Special Session will be monitored by the Committee—in consultation with UNICEF—when reviewing the reports of the States Parties in the years to come.

The Committee regularly recommends effective measures (without specifying concrete percentages or other direct targets) for improving access to basic health care. It is also part of the Committee's role to call for special attention to themes and issues that are particularly sensitive—such as HIV/AIDS—or easily overlooked—like (mental) health problems of adolescents and the lack of care for disabled children. In the next section I will briefly describe the Committee's activities in these three areas.

Special Areas of Concern for the Committee

HIV/AIDS

Although not specifically mentioned in the CRC, the devastating impact of HIV/AIDS is documented not only in the reports of such organizations as UNAIDS but also in the reports of many States Parties to the Committee. For example, the second periodic report of Ethiopia reported that:

> HIV/AIDS in particular is a major threat to the welfare of children... in 1997 there were 2.4 million adults and 150,000 children under the age of five infected with

> HIV... AIDS will increase the death rate at all ages. However, the impact will be most severe among young adults and children under the age of five whose mortality rate may double by 2009 due to HIV related deaths.... The number of AIDS orphans could increase to 620,000 by 2000 and to 1.8 million by 2009. Such a large number of orphans will create serious strain and will be an increased burden for the extended family, the community and the society at large.[5]

On October 5, 1998, the Committee devoted one of its general discussion days (which are attended by relevant specialized agencies of the UN and a wide variety of NGOs) to a discussion entitled "Children Living in a World with HIV/AIDS."[6] A common characteristic of the many recommendations formulated at the end of this discussion was the need for more information (collection, dissemination, awareness campaigns, and access to information). For instance: "Information on HIV/AIDS should be adapted to the social, cultural and economic context, and it should be made available through age-appropriate media and channels of dissemination." Sometimes, rather unorthodox methods can be effective in reaching out to children and adolescents. An interesting example presented to the Committee was the work of the well-known South African entertainer and comedian Pieter-Dirk Uyts. He visits high schools (including some exclusively girls' schools) and gives informative shows on HIV/AIDS prevention that include information on (among other possibilities) safer sex.[7] Other recommendations of the discussion day focused on the prevention of discrimination, in particular against girls, the development of youth-friendly and easily accessible services, and the recognition—if necessary by enacting legislation—of the child's right to privacy and confidentiality in relation to HIV/AIDS status.[8] It is too early to assess the impact of these recommendations on the practice of States Parties. But the Committee uses them in its discussions with the delegations of States Parties when reviewing their reports.

Children with Disabilities

Article 23 of the CRC recognizes that a mentally or physically disabled child should enjoy a full and decent life

in conditions that ensure dignity, promote self-reliance, and facilitate the child's active participation in the community. This is elaborated with a provision concerning access to special care and assistance free of charge if possible, as well as effective access to education, training, and other services in order to achieve the child's fullest possible integration into society. In the spirit of international cooperation, international exchange of information and experiences should be promoted in such areas as education and rehabilitation, particularly taking into account the needs of developing countries.

In light of this provision, it is understandable that the Committee not only systematically examines the situation of disabled children in its Concluding Observations, but also chose to devote an earlier discussion day in 1997 to the topic of children with disabilities. At that discussion day it was decided to create a working group on the rights of children with disabilities which would include members of the Committee, representatives of relevant UN bodies, and NGOs to further consider the recommendations made at the discussion day and to elaborate a plan of action.[9]

This working group met for the first time in January 1999 and developed—with crucial support of NGOs like the World Blind Union, the World Federation of the Deaf, Disabled Peoples' International, and Save the Children—its own 18-month plan of action.[10] The primary purpose of the group was to strengthen and support the work of the Committee in monitoring and promoting the rights of disabled children.[11] A concrete offshoot of the activities of this working group was the establishment of an office to coordinate the input of information on children with disabilities into the Committee's monitoring activities. This office provided the Committee at the presessional working group for the 27th Session (20 January–2 February 2001) with very helpful country-specific information and comments on the situation of children with disabilities. This input will help the Committee in the years to come to present well-focused and more effective recommendations to the states regarding both protection and the provision of services for disabled children.

Adolescent Health

Traditionally, the focus of health care initiatives presented to the Committee has been the basic health care services available for young children. But the CRC also concerns children between 12 and 18 years of age. For this group, health care services must focus on additional issues—such as reproductive health, substance abuse, and mental health problems such as anorexia and suicide—which may be more sensitive or more difficult than those facing younger children. In addition, the evolving and growing capacity of this group of children to take responsibility in personal matters and to make independent decisions about their lives must be taken into account (see Articles 5 and 14 of the CRC).

In its Concluding Observations, the Committee regularly expresses its concerns and formulates recommendations regarding such issues as teenage pregnancy, the accessibility of information about sexually transmitted diseases (STDs), and the accessibility of counseling services and prevention methods. The Committee has also formulated Recommendations pertaining to accurate and objective information about substance use, including the consumption of alcohol and tobacco, recommendations for effective prevention programs, and the development of rehabilitation services for children who are victims of substance abuse. At the same time, it has recommended the introduction of comprehensive restrictions on tobacco and alcohol advertising. This quotation from a recent Concluding Observation regarding South Africa is provided as an example of the Committee's approach:

> The Committee recommends that the State Party reinforce adolescent health policies, particularly with respect to accidents, suicide, violence and substance abuse. It also recommends that the State Party undertake a study to assess the situation of children with mental health concerns and introduce programmes to guarantee adequate care and protection for them. Additionally, it is recommended that the State Party undertakes further measures, including the allocation of adequate human and financial resources, to develop youth friendly counselling, care and rehabilitation facilities for adolescents that would be accessible, without

parental consent where this is in the best interest of the child.[12]

Conclusion

My hope is that this commentary shows that the Committee takes the child's right to the enjoyment of the highest attainable standard of health very seriously. The Recommendations of the Committee are in and of themselves insufficient to improve the enjoyment of health-related rights. But if States Parties take their commitment to children's rights seriously, they will take appropriate and adequate actions as suggested in the Recommendations. In this regard they need not act without assistance. For example, the Committee frequently suggests that States Parties seek technical assistance from UNICEF, the WHO, or UNAIDS. Furthermore and finally, NGOs could and should play an important role, not only in consistently reminding governments of their commitment to human rights, but also in offering support, cooperation, and services, with a view toward achieving the highest attainable standard of health for all children.

References

1. For more information about the monitoring role of the Committee, see G. Lansdown, "The Reporting Process under the Convention on the Rights of the Child," in: P. Alston and J. Crawford (eds), *The Future of UN Human Rights Treaty Monitoring* (UK: Cambridge University Press, 2000), pp. 113–128.
2. See e.g. Article 25, UDHR: "The right to a standard of living adequate for the health and well-being...," Article 16, African Charter on Human and Peoples Rights: "... the right to enjoy the best attainable state of physical and mental health." See also Article 10, Protocol of San Salvador (on the American Convention on Human Rights).
3. For more detailed information on Article 24, see S. Detrick, *A Commentary on the United Nations Convention on the Rights of the Child* (The Hague: Kluwer Law International, 1999), pp. 396–435.
4. See e.g. *Concluding Observations of the Committee on Finland*, CRC/C/15/Add. 132, 16 October 2000, para. 13–16.
5. CRC/C/70/Add. 7, 23 March 2000, para. 53 and 54.
6. Rule 75 of the provisional rules of procedure states that the Committee can organize a day of general discussion on a specific article of the CRC or on a theme in the area of the rights of the child. This discussion is held annually, usually in the first or second week of the Committee's fall session. Participation is open. The goal is to enhance understanding of the content and implications of the CRC via exchange of views, experiences

of the CRC, experiences (good practices), and data. The day is concluded with a set of recommendations.

7. See report on Uyts "school tour," *NRC/Handelsblad* (Dutch daily newspaper), April 21, 2001. His information campaign is very direct and plain. As he said: "Die huis is aan die brand, ons moet nou aktief wees."

8. For more information, see *Report of the Committee on the Rights of the Child to the General Assembly, Fifty-fifth Session, Supplement No 41* (A/55/41), para. 1507–1536.

9. For more information, see *Report of the Committee on the Rights of the Child to the General Assembly, Fifty-third Session, Supplement No. 41* (A/53/41), para. 1399–1428.

10. See *Report of the Committee on the Rights of the Child to the General Assembly, Forty-fourth Session, Supplement No. 41* (A/44/41), para. 1501–1506.

11. See also e.g. L. A. Brolin, Rädda Barnen: Sweden December 1996. *The Rights of Children with Disabilities. How is Progress Monitored?*

12. *The Report of the Committee*, A/55/41, para. 1462. Similar recommendations are made to many other States Parties both in the industrialized and developing parts of the world.