

3 The Right to Play

From an international legal perspective, the right of all children to play can be traced back to the proclamation in the 1959 Declaration of the Rights of the Child, which marks the first major international consensus on the fundamental principles of children's rights: 'The child shall have full opportunity for play and recreation [...] society and the public authorities shall endeavor to promote the enjoyment of this right' (Principle. 7). This proclamation was reinforced in the Convention on the Rights of the Child 1989 (UNCRC), which explicitly states in Article 31 that:

States Parties recognize the right of the child 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.

The UNCRC has been ratified by 192 of 196 countries, including all European countries. Of the 54 articles in this convention, Article 31 is highly significant as it represents the first time that the international community has recognised the importance of play and recreation in the lives of children and young people. Play is now a human right enshrined in international law.

Two other articles under the UNCRC also make specific reference to children and young persons with disabilities: Article 2 outlines the principle of non-discrimination and includes disability as grounds for protection from discrimination and Article 23 highlights the special efforts that States Parties must make to realise these rights. Article 12 of the Convention is also of note for this work as it focuses on the child and young person's right to express their opinion and have it taken into account in any matter or procedure affecting them.

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. (United Nations High Commissioner for Human Rights 1989)

For the first time, we have an international agreement that states that all children and young people have the right to express their views and have them taken into account (Morrow and Richards, 1996).

3.1 Critique of UNCRC in relation to children with disabilities

At a legislative level, the UNCRC is based on the premise that children are equal to adults and should be seen as 'persons'. International policies are increasingly constructing children as rights-bearing citizens rather than immature beings. There is no universal agreement on this view, however, and Jean La Fontaine (1997) argues

that whatever the rhetoric, at a legislative level, many in the West still reject the idea of children as persons. The UNCRC also has at its core a universalised view of ‘the child’ based on Western assumptions about children’s ‘best interests’ (Bluebond-Langer and Korbin, 2007) and a single standard of age which is 18 years and under. This universal definition of children is problematic as it assumes that all children and childhoods are the same globally irrespective of culture, gender, ethnicity, history or disability, despite evidence to the contrary (LeVine, 2007).

When this dominant discourse of childhood is integrated as a normative baseline into human rights discourse, it enforces views of ‘other’ childhoods as abnormal and problematic. Thus, children and young persons with disabilities can be viewed as ‘other’ and therefore problematic. Despite the limitations of the convention, however, non-ratification of the UNCRC by a state would signal their failure to recognise all children’s rights broadly. Thus, the UNCRC may be regarded as a milestone in how we view children and childhood in terms of both the development of national and international policies related to children and young people and the encouragement of scholarly activity that includes the views and active participation of all children and acknowledges the importance of play.

3.2 UN Convention on the Rights of Persons with Disabilities (CRPD)

The Convention on the Rights of Persons with Disabilities (CRPD) was adopted by the United Nations General Assembly in 2006 and came into force in 2008. To date, eight European countries have yet to ratify this convention fully. The CRPD builds on the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (1994) and World Program of Action on Disabled Persons (1982), neither of which are legally binding treaties. The purposes of the CRPD are to promote and protect the enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to promote respect for their inherent dignity. The CRPD marks a ‘paradigm shift’ (Harpur, 2012) in attitudes and approaches to persons with disabilities and is a move away from an approach where persons with disabilities are considered objects of interventions, to an acknowledgement of them as subjects of human rights, able to make decisions about their lives and futures and as claimants of rights on their own behalf.

The CRPD has created a vigorous new disability rights model that empowers disabled people’s organisations and creates a new paradigm for disability scholars (Harpur, 2012). Article 7 of the CRPD places a clear obligation on governments to ensure that children with disabilities enjoy all human rights on an equal basis with other children (CRPD, 2008). It further stipulates that:

States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right. (CRPD 2008, pp. 10).

These core principles, also enshrined and monitored by the UNCRC, constitute an important legacy for the fulfilment of the rights of children with disabilities and their full participation in society. Article 30 of the CRPD promotes the full and effective participation and inclusion in society of children and young people with disabilities, as well as adults with disabilities, and focuses specifically on access issues:

To ensure that children with disabilities have equal access with other children to participation in play, recreation and leisure and sporting activities, including those activities in the school system. (CRPD, 2008, pp. 22)

Article 30 focuses on equal access issues for children and young persons with disabilities to participate in play and recreation, thereby acknowledging an existing concern that children and young people with disabilities experience barriers in relation to access for play and recreation. The challenge following the ratification of the CRPD, however, is how to ensure the CRPD is implemented as a roadmap for change and not just as a technical standard (Harpur, 2012).

3.3 What is a General Comment and why were they introduced?

General Comments are developed over time to help States interpret articles within a convention as a part of a monitoring and feedback program following ratification of Conventions. To date, 17 General Comments have been developed related to the UNCRC, and of those, two have specific significance to play and children with disabilities: General Comment no 9 (children with disabilities) and General Comment no 17 (right to play and leisure).

3.4 General Comment No 9

The General Comment on children with disabilities was prepared and published in 2007 as a response to feedback from States that children were still experiencing serious difficulties in having their rights protected. This was evident through multiple factors including societal, cultural, attitudinal and physical barriers and related in particular to discrimination and exclusion from leading a full life (Articles 2 and 23 of UNCRC). In particular, the comment states:

The attainment of full inclusion of children with disabilities in the society is realised when children are given the opportunity, places and time to play with each other (children with disabilities and no disabilities). Training for recreation, leisure and play should be included for school-aged children with disabilities. (General Comment No 9, pp. 70)

3.5 General Comment No 17

In the 26 years since the launch of the UNCRC on the rights of the child, the developed world in particular has seen significant increases in urban populations (Marshall, 2007), ‘stranger danger’ fears (Valentine and Holloway, 2000), increased commercial play spaces and play provision internationally (McKendrick et al. 2000), which all influence the ways children and young people engage in recreation.

This is compounded globally by specific demands such as increasing educational demands, domestic work and child labour (Edmonds and Pavcnik, 2005), which all diminish the time available for children to enjoy their rights as outlined in Article 31. General Comment 17 was developed to address these concerns specifically and reflects the committee’s specific concerns about the difficulties faced by particular categories of children in relation to achieving equality vis-a-vis the rights defined in Article 31. Children and young persons with disabilities are clearly and consistently identified within General Comment 17 as a specific group who have difficulties ensuring that their human rights related to play and recreation are met.

3.6 International Play Association and Play for Children and Young Persons with Disabilities

Numerous international play organisations and associations lobbied for General Comment 17, among them being the International Play Association (IPA), an international non-governmental organisation whose purpose is to protect, preserve and promote the child’s right to play as a fundamental human right. In May 2015, the IPA issued a position paper *on The Play Rights of Children with Disabilities* in response to international concerns on the part of their members about the multiple barriers that children with disabilities may face in exercising their right to play:

Disabled children have the same right as other children to sufficient time and space to play freely, in the ways they choose, without being unduly overprotected. Many disabled children face multiple barriers that restrict their day-to-day opportunities to play. These barriers include the imposition of activities determined by adults, inaccessible facilities and environments, negative attitudes and inappropriate social policies and programs which restrict the lives of disabled children. IPA believes that families, care-givers, professionals and authorities must recognize the value of play, both as a right in itself and a means of achieving optimum development. Every child is different. To enable each child to enjoy their right to play, pro-active measures are needed to remove disabling barriers and promote accessibility. (The Play Rights of Children with Disabilities. IPA Position Paper 2015)

The focus on ‘time and space’, and play chosen by the child, echoes the views expressed in General Comment 17 and indeed was one of the rationales for its development. The acknowledgement that children can be ‘unduly overprotected’ mirrors much of the

rhetoric of the last decade of risk-averse societies and cultures where the unrealistic goal appears to be '*risk-free environments*' for children to engage in play (Barron, 2014; Livingstone, 2002). The points highlighted by the IPA are not unique to children with disabilities; rather they are affecting the play worlds of all children.