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Legal development in the progressive realization for the rights of the child.

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Chapter 1

Introduction

The United Nations Convention in the Rights of the Child (CRC) is the first binding universal treaty dedicated exclusively towards the preservation and promotion of the rights of children. The General Assembly has passed the CRC in 1989, which was lagged at the beginning by an expanded and challenging drafting process; however the ultimate document is nevertheless both resourceful and important where the potential exists within the CRC in order to advance appreciably the rights of the children all over the world¹.

The CRC is deemed to be a powerful legal and political accomplishment. It boosted the fact that a child has an independent status that is an independent right-holder. These issues are placed in the centre of the average human rights agenda. It was introduced by the Director of UNICEF (United Nations Children's Fund) as 'Magna Carta for children'. Furthermore the CRC has produced appreciable devotion among States confirmed by the fact that on the day the CRC was opened for signature in January 1990; the CRC was signed up by 61 States, which came into action seven months later. This is thoroughly unique. UN treaties have capabilities to attain the essential ratifications to come into force for years and even decades. For Instance, it was taken 10 years by the International Covenant on Civil and Political Rights (ICCPR), to achieve the 35 ratifications required coming into action. By contradiction, the CRC attained almost comprehensive ratification is significant for every treaty related to human rights which gives the CRC the right to apply political, legal and moral force².

Background

"The emergence of the child as an independent right-holder is not a recent phenomenon in international law. One of the earliest international human rights instruments was the Declarations of the Rights of the child which was passes by the League of Nations in 1924. This early initiative was essentially paternalistic and welfare oriented, its conceptualisation of the child stressed vulnerability and the emphasis was on protective strategies. The 1924 Declaration was non-binding and few States incorporated it into their domestic law; consequently its impact on the practice of States or international organisations was limited and its significance today is symbolic. It was followed in 1959, by a similar Declaration of the Rights of the Child. Such early international efforts to protect children were aspirational and perhaps even tokenistic within which the child's rights were framed in broad terms. Consequently, up to the 1970s the debate about the child as a rights-holder was confined very much to the domestic arena in a few Western States; on international level children's rights were a matter of particular concern of to humanitarian organisations but did not feature highly on the human rights agenda"³.

"In the US in the 1970s there emerged a coherent and robust movement for the empowerment of children in political, civil and social contexts. This hinged on a move away from the welfare-oriented paternalism of earlier campaigns towards a radical liberation-oriented approach, the cornerstone of which was recognition of the child' autonomy. In addition, children's rights advocates pushed for a separate and particular canon of rights for children who reflected their needs and concerns. By the end of the decade a consensus emerged among States that the rights of the child were inadequately addressed in existing international human rights instruments and it was clear that international law offered little protection in particular to the many children living in extreme and difficult situations"⁴.

¹ Trevor Buck, 'International Child Law' Cavendish Publishing

² Ibid

³ Ibid

⁴ Ibid

“The international developments mirrored the debates taking place in the US and thus formed a loosely structured children’s rights movement which sought to create awareness of the outdated tendency of many States to diminish the rights of the children in matters of law and policy directly concerned with children. A central objective of the movement was recognition of children’s rights as human rights and that as such they merited a dedicated treaty to ensure their promotion by States. Pressure to create a binding international instrument led to a formal proposal was redrafted several times as particular controversies emerged around the inclusion of certain rights. For example, consensus could not be reached on the beginning and end of childhood (particularly the issue of the point at which life begins). Setting the parameters for autonomy, most notably relating to the right to freedom of religion, also proved to be highly problematic as did issues around adoption due to the non-existence of this concept in Islamic societies. Moreover, the drafting process of the CRC was generally hampered by the need to strike a balance between traditional attitudes, cultural particularities and radical proposals for empowerment of children, while at the same time the document had as wide appeal as possible. Whether the CRC struck the right balance in relation to many of its provisions are entirely unacceptable. Moreover, the CRC is marked by the controversies and compromises during the drafting process and in some instances rights are framed in such broad terms that they are unclear in their meaning or they fail to improve on existing standards. Taken as a whole, however the CRC expands considerably the international law applicable to children through the sheer ambition and breath of its provision. More significantly perhaps is the injection of child-centered perspectives into international human rights law”⁵.

Literature Review

The philosophical foundation of child rights is very contestable. According to Langois, there are several philosophical foundations of human rights which could be expanded to apply to the philosophical foundation of child rights. Even though the classical philosophical divides of human rights may not specifically speak to child rights, the latter could be deduced from the general philosophical foundations of human rights. There is no denying the fact that since child rights are fundamental elements of human rights, the philosophical foundation of child’s rights is fundamentally to the broad philosophical foundation of human rights, according to Bunch, 1990; Binion, 1995⁶.

There are several philosophical foundations of law that generate definite and most times associated heritage if human rights. The following are included: the natural law, positive law, sociological Marxism, realism, unilateralism, and historical and anthropological foundations. While all of these theoretical foundations have presence on the conception of law in general and human rights in particular, they are not systematically associated to the universalist conception of human rights. Therefore, it can be said that this paper did not explore all the theoretical foundations of human rights but indeed focused on those expected very useful in foreseeing the theoretical foundations of human rights but it focused on those deemed very useful in anticipating the theoretical foundations of child’s rights and also fundamental enlightening and conceptualizing the philosophical choices of this paper⁷.

Methodology

⁵ Uchenna Emelonye, ‘Theoretical and Normative Foundation of Child Rights’, Volume 15, Issue 5, US-China L. Rev. 1 (2018)

⁶ ibid

⁷ ibid

In order to address the issues mentioned in this work, the following sources were used for better understanding of this dissertation. In this regard, I have used books, journal, a thesis paper and different websites. The international treaty of ICESCR was used for various contents.

Objectives and Key Research Questions

This dissertation's objective is to explore the following issues. Firstly, the best interest of a child which pertains to the principles that are used to determine what will be best for a child for particular circumstances. In other words, the best interest of the child assessment is used to determine which orders and services will best serve the child⁸.

The best interest of a child is mainly determined in case of family issues. The best interest of a child is used by the court by taking into consideration several circumstances related to the child's protection⁹.

The second part of the work deals with child participation. There are many cases where a child's voice should be considered. In other words, a child must have freedom of expression. However, this particular principle is widely debated by a number of scholars with various interpretations.

The final two parts engage in discussion of economic, social and cultural rights along with the concept of progressive realization. It includes the importance of implementing economic, social and social rights for children within a society and how the doctrine progressive realization plays part in protecting a society's economic, social and cultural rights which means that a State has an obligation to respect, protect and fulfill.

Chapter Outline

In this dissertation Chapter 1 deals with introduction. Under introduction the following categories are provided: background, literature review, methodology, objectives and key research questions and chapter outline. Chapter 2 includes the discussion of best interest of the child and finally chapter 3 deals with the importance of having economic, social and cultural rights and how the progressive realization plays a part in protecting those rights.

Chapter 2

Best Interest

“The CRC has promoted a new vision of the child as bearer of human rights, which is essentially influential in policy, legislation, research and programming and worldwide as well as regional, national and local levels. Yet, despite the closest universality of adoption of the CRC and its success Michael Freeman points out in this collection, it seems important to have a frequent rehearsing and monitoring in a constant manner which may re-affirm the case of human rights for children. Furthermore, despite prevalence of focus in a good deal of literature on assessing the progress in (or lack of) implementation, ‘mainstreaming’ and impact on children’s lives, there is an argument that it is important to visit the visions behind the drafting and adoption of the CRC. One might think to give strength on the underlying assumptions and beliefs leading to a ‘healthy’ exercise for reconsidering the present efforts to implement the CRC. Such capability was held by the time the Swansea conference held in 2008. By the same means there was an urge to wish and explore meanings for possible reasons of conflicting and mixed feelings that one determines in the field by wishing to explore possible reasons for the conflicting and mixed feelings that one identifies in the field, where confirmation of strong commitment to the CRC goes in the company with high levels

⁸ What Does “Best Interests of the Child” Mean?

⁹ *ibid*

of frustration about resistance encountered and where confusion, sometimes excitement and some other forms of discomfort from the stands taken in the name of the children's rights which are showed as a straightforward set of technicalities. Upon the investigation of this collection, it is apparent that one would argue a better understanding of philosophical foundations and expression at the same time the drafting and adoption of the CRC which may deem to be of considerable aid which may probably make sense where the claims are perhaps inevitably contested and differently interrelated made in the name of human rights of children as well as the resistance sometimes encountered"¹⁰.

“Accounts on the history of the CRC (for example, Cantwell 1992, Freeman 2004, Alston and Tobin 2005, Milne 2008) often recognize the role played key figures such as Eglantyne Jebb, Janus Korczak or Adam Lopatka as well as illustrate examples of resistance marking the path to adoption by the UN General Assembly in 1989. Each step forward was an achievement in overcoming opposition expressed on one or another ground and some measures needed to be taken over a few decades. The 1924 Geneva Declaration did not bring about acceptance of the child as an independent individual as, for instance, the oeuvre and writing of Korczak may have inspired. During the preparation of the 1959 Declaration on the rights of the child there was still no recognition as demonstrated in the statement of the French delegate stating that the child was not in a position to exercise his or her own rights. Adults had the power to make or exercise decisions on behalf of the children. As per a report made by Freeman, the discussion of the importance of the ‘need to protect the legitimate family’ proposed by the representative of the Italian government in response to the expressed need to protect illegitimate children against discrimination. On the other hand, the principle of non-discrimination was introduced by the 1959 Declaration where there was no recollection of the child as a public agent: this particular principle was later integrated in the CRC and is often observed today as a ‘foundation’ of the participation of articles. Those articles were incorporated to reopen extant human rights by acknowledging that they had in the hands of US delegates whose attention on the issues related to freedom of expression or information was intended to indicate the short of freedoms in the Soviet bloc. Expressions of those negotiations will show the density of ideological inequality between East and West, still noticeable during the drafting of the CRC, but also give a reminder on how issues surrounded in the CRC may be explored in terms of content as much as individuals or organizations make use of the Convention for various purposes. An example can be shown of how mattering as much as can be found for example, in Nigel Cantwell's (1992) acknowledgement of resistance within the area of human rights approaching the important role NGOs took while drafting the CRC for the first time in the field of human rights. It is profitable to remember different confrontations, some of which seem immaterial today, to give an impression of the context of progressive negotiation of the CRC over 10 years. As Cantwell gives importance in his volume, the CRC mirrors a hard-won contest consensus on the material on human rights for children”¹¹.

Following its astounding accomplishment of signatures and ratifications, explanations about the more contemporary history of human rights have just started to be recognized. Alston and Tobin (2005) notably refer to two post-adoption stages. The first, at the end of the twentieth century, is allocated as ‘enthusiasm and optimism’. Affiliations promoted and developed the dispersal of actions to make the CRC well known by making the methods as well as normative frameworks come up, as they dispute, ‘would have been imaginable even a quarter century earlier’ (2005:7). The second and more challenging post-adoption stage staring in the

¹⁰ Antonella Invernizzi and Jane Williams, ‘The Human Rights of Children-From Visions to Implementation’, Ashgate Publishing Limited 2011

¹¹ Ibid

twenty first century is determined by them as one of the ‘consolidation’ and ‘reaction’ which would work on somehow ending the ‘honeymoon with children’s rights’¹².

After the span of period when Alston and Tobin wrote, one has to consider the economic downturn, the impact of which is only at the start of being assessed and likely to be measured, among other signals, by a climatic development in rates of child poverty, deprivation malnutrition and health deficiencies and descending levels of education. This goes hand in hand enormous budgetary cuts in the expenditure of the government that are undoubtedly changing the landscape in which children’s agenda is placed¹³.

If these are rather gloomy times in the recent history of the CRC, they are necessarily those in which human rights, including those of children, prove their value. It is important to reevaluate what eventuated in times of enthusiasm and optimism, during the time reinforcing the agenda to protect, promote and fulfill human rights of children; a closer view at the relatively contemporary history of the CRC might allow appraisal of the austerity and viability of paths taken. Indeed a very frivolous reading of some key texts written at the same time of drafting and adoption of the CRC provide much food for thought¹⁴.

Inevitably, Jebb had originally proposed the notion, arguing that ‘it is...children who pay the heaviest price for our short-sighted economic policies, our political blunders, ours wars’ (cited in Hammarberg 1990:1998) was well presented in some of the early 1990’s writings. The vision of Hammarberg on the role of the CRC, whilst promoting the question of allocating priorities, point out inescapably of the enthusiasm and optimism of the post-adoption era¹⁵.

Such concerns are very authentic in today’s socio-economic and cultural rights. On a different level, texts around the time when the CRC was adopted, it used to emphasize that the CRC was contemplated to collate a number of rights which were previously found in different human rights mechanisms, throughout the same time developing and elaborating some of those rights to account for specific needs and interests for children (e.g. Miljeteig-Olson 1990:149). Whilst being a human rights mechanism, it required to move from traditional categorization of rights and articulate unification, equal importance and mutual and mutual reinforcement rights¹⁶.

“The Convention is extraordinarily comprehensive in scope. It covers all the traditionally defined areas of human rights-civil, political, economic, social and cultural. In doing so, however it has shied away from distinguishing between these areas and, on the contrary, has happily tended to underscore the indivisibility, mutual reinforcement and equal importance of all rights. In order precisely to avoid that traditional categorization, with negative historical connotations, many commentators have preferred to describe and analyse the scope of the Convention in terms rights relating to ‘protection’, ‘provision’...and participation...-the 3Ps (Cantwell 1992:27)”¹⁷.

Taking a glance at that now, one can thus interrogate if the concept of 3Ps has been successful in advocating the application of the principle of unification, equal enforcement and reinforcement of all rights enshrined in the CRC. As per the discussion of participation, one can ask how assertive specialization of programmes and advocacy handles this important doctrine. The question is, are today’s key factors methodically addressed in terms of unification of rights and if that is not possible, then what preferences are proposed? ¹⁸

¹² Ibid

¹³ Ibid

¹⁴ Ibid

¹⁵ Ibid

¹⁶ Ibid

¹⁷ Ibid

¹⁸ ibid

There is a rise to further questions considering the vision of the child. It is intensely perceived that the CRC has advocated a fundamentally new vision of children. A set of human rights was set out to draw together by the drafting process of the CRC that were made specifically for children, at the same time redefining them to account for their 'specific needs and interests'. As per Miljeteig, this is a global awareness-elevating process...which in many ways changed the world's understanding of children (Miljeteig-Olson 1990:149). Whereas the CRC embraces an apprehension of the child as a self-reliant human being with rights, it is important that what was written during that time is exceptionally judicious. In contradiction with today's mainstream writings on the rights of children, the result of the drafting process is expressed in the following terms: 'growing' and 'understanding,' regional differences', 'careful development' and 'delicate balance'¹⁹.

"Similarly to Miljeteig, Alston handled the discussion on culture, best interest and the competing or conflicting interests of human rights with notable caution:

"The text of the Convention does not, and indeed realistically could not, reflect any set formula for accommodating the competing interests that arise in this regard. Rather it consists of a range of different principles, the balancing or reconciliation of which in any given situation will depend on a variety of considerations. This complexity needs, however, to be explored and illustrated in actual case studies (Alston 1994:5)"²⁰.

"This careful consideration and acknowledgment of the complexity seems to contradict with some of today's predominant statements of certitude that populate guidelines implementation handbooks, policy making or programming and advocacy in relation to the CRC. That point is also made by John Tobin in his book"²¹.

In 1994, Alston had a curiosity on how to avert forthcoming misunderstanding in relation to the harmony struck by the CRC the difficulty of the tasks. It relates to the challenging rights and interests of children and women, which is comprehensive to other settings; he checks the risk of the mechanism being moulded to reverse specific value preferences. According to case studies, Alston argues that it is necessary to have the need to be carried out to provide interpretation of the balance struck by the CRC²².

"Returning to the mixed feelings mentioned above, encountered in the field, one thus wonders how much confusion, frustration and sometimes discomfort are precisely the outcome of the 'global-consciousness-raising process', to borrow Miljeteig's expression, sustained and amplified after the adoption of the CRC through the efforts of international organisations (IOs), NGOs, academics, experts and governmental agencies. It has led to an enthusiastic 'appropriation' of the children's rights agenda by differences instances and organisations bringing about multiple interpretations as well as, as one can read in Nigel Cantwell's work, a distance from human rights instruments"²³.

Literature customarily makes references to contradiction outside the children's rights or human rights arena. Therefore, it seems paradoxical that the elevated distance from human rights mechanisms and schemes come at least partly from professionals and institutions which have the intention to promote it. Yet it is what can be anticipated from the contributions by Cantwell and Tobin, where both express pleas for meticulous role of the CRC. As per the point made by Cantwell, the enthusiastic multiplication of interpretations at discrepancy with the CRC brings about momentous results. However, this now raises the question of what creates the human rights basis and where shifts have taken place. Three contributions focus explicitly on the foundations and visions behind the program of human rights of children, themes notably little developed when contrasted to current literature in

¹⁹ Ibid

²⁰ Ibid

²¹ Ibid

²² Ibid

²³ Ibid

human rights. Other contributions, whilst administering investigation of definite concerns, equally introduce significant material for discussion²⁴.

It is not reasonable to expect human rights mechanism setting inalienable rights for all young persons under 18 and thus symbolized by a crucial level of ambiguity bring about level of bring about consensus, in interpretation, principally when success if not popularity, depends on a social platform without illustrated barriers. The contribution made by Tobin and Cantwell clearly shows how much claims made on the behalf of children in the name of the CRC are of impugned nature. Cantwell assures the rights' inflations, which recommends specific explanations of rights far removed from what was intended in the CRC. If we follow Cantwell, it is not possible to credulously welcome explanations that go further than that enshrined in the CRC by determining the danger rights inflation poses for consensus accomplished in the past. The question emerges whether the agenda of children's rights can be taken passionately in the field of human rights with proliferation of claims at distinction with the CRC²⁵.

Chapter 3

Child's Participation

The CRC is one of the most debatable international treaties. However, the most contested, confused and disputed issues are probably seen in relation to participation articles. In this collection, it is apparent for one to find various statements relating to the issue of participation, which even though seems contradictory at first, sufficiently clarify some of the different levels related to participation needed to attain an overall understanding of this field. According to Cantwell, the present current expanded definition of participation includes a variety of steps which has led to claims at variance of the CRC. It is argued by him scrutiny or criticism is needed, for instance, related to claims for children for providing them a platform for all kinds of events without considering the initiative concerned links to the human rights agenda, claims which give emphasis on decision-making and child-led processes going well beyond the right to be included and consulted in the CRC and similar activities deployed regularly for 'ticking boxes' to prove the consideration of participation²⁶. Cantwell's question related to the expansion of the definition of participation can also be seen in other areas, even though sometimes accompanied by warnings. An expanded definition is provided by Tobin in his discussion related to human rights based approach. On the other hand, Jaap Doek considers the need for consolidating child participation within the activities of monitoring the CRC Committee. Another expert in this area known as Beazley at al...whose rights bases research is strictly included in the articles of participation, also alerts about frequently insufficiently thought out attempts to promote participation, which often lead to poor outcomes, which sometimes fail to respect the rights of other children. It is sometimes argued that some claims related to child participation might be better framed in terms of citizenship. Geraldine Van Bueren, on the other hand, gives a prospective frame to her discussion in terms of international citizenship which provides strong evidence in favour of the potential instrument of communication/complaint, as per her examination²⁷. "Cantwell's call for a clear link between participatory initiatives and human rights agenda clearly resonates with the examples of successful involvement of children described by Van Bueren. As for other historical processes that have considerably empowered human rights,

²⁴ Ibid

²⁵ Ibid

²⁶ Ibid

²⁷ Ibid

Van Bueren argues that initial stages considerably empowered human beings, she further argues that, that initial stages inevitably will not provide real empowerment”²⁸. “Despite efforts to conceptualise and develop a coherent approach, a structured overview capable of considering the very different approaches and paths taken by initiatives names as participation is still missing (van Beers et al. 2006). Furthermore, it can easily be observed how, despite efforts to develop guidance and standards for activist and organisations, confusion are very much present in the field. One easily finds evidence of young people not entirely clear about the role they can have in specific event in which they are participating. Also raised more than once are issues regarding the conflicting rights of children involved in international events. Beazley et al. and Elspeth Webb provide examples of children’s participation in health related issues that explicitly seem to coincide with the ‘ticking boxes’ exercises criticised by Cantwell. In the field of participation one can also identify the position of activists and experts ‘not being satisfied with anything but the best solution’. While clear distinctions between consultation and child-led initiatives were made relatively early after the CRC’s adoption (Hart 1992), the field often involves an unreservedly hierarchical approach whereby a maximal level of involvement is systematically sought, that is the ‘best solution’. In simple terms, young people seem never to be involved enough, not deciding enough or not involved in all aspects of the initiative taken. While child-led initiatives have indeed incredibly significant achievements, a number of other experiences show that confusion still dominates the field. The democratic nature of selection and issue of representativeness, whilst essential to avoid manipulation, is also sometimes geared toward a perfection that would not be conceived as such in the adult world”²⁹.

A critical approach might be seen as a threat to child the agenda for participation. It is important to see development of participation, which is necessary than ever. Among other things it is important to ensure that children are treated with dignity and respect which must include providing invaluable information and counteract overall processes of disempowerment. Yet, despite outstanding achievements made in some areas, it is evident to have the need for greater clarity and rigour in relation to the overall field of child participation³⁰.

The claims related to human rights and conceptualization rights might be contested and disagreement might be seen by the reader with some arguments, whilst also identifying conflicts and variances between scholars on more than one ground. Yet, examining the evaluation of rights of children discourses and reappearing present aims in the light of the original views which appear to be an indispensable task. Many of the positions and views can certainly be presented which can be used to examine the variety of rights of children along with identification of different views and positions and criteria on which they are based. This should certainly be of help to any expert or professional who wish to work towards the achievement of the human rights for children. Moreover, criteria for measuring progress inevitably depend on the manner in which intentions are not defined and need to be assessed in the light if that discourse. Finally, identifying idealised images and unrealistic expectations might reduce avoidable frustration and introduce some clarity³¹.

“Beyond the debates considered thus far, a number f issues discussed are likely to permit the reader to assess the remarkable progress made in the last two decades. The first area where the progress is assessed according to some scholars, relates to structures and procedures to protect and protect human rights enshrined in the CRC at the international level. Doek’s contribution outlines the work of the UN Committee on the Rights of the Child (CRC

²⁸ Ibid

²⁹ Ibid

³⁰ Ibid

³¹ Ibid

Committee) in monitoring and fostering the CRC. It implicitly describes considerable advances were procedures have progressively been put in place to examine, respond to and follow up State Party, alternative and children's reports. Beside formal procedures, he describes a dynamic process generating awareness and discussion whilst promoting dialogue and collaboration between governments and civil society. Suggestions are made on how to increase feedback and collaborations in these communications and efforts to involve children, an area where he considers progress is still limited. In relation to the monitoring process, Judith Ennew's examination of data included in national reports provides complementary information. Comparative analysis of reports of State Parties between 1992/1993 and 2010 certainly shows progress mainly because of the regrettable lack of focus characterising the first reporting round. She shows that greater clarity has been achieved, with the contribution the 2003 General Commentary made to more accurate reporting. However, the 2010 reports still present very significant gaps in knowledge. A lack of child focused and disaggregated data, permitting assessment of discrimination and information on key categories of children (e.g. children with disabilities, juvenile justice system, child poverty, in care or sexually abused children), inevitably limits the capacity to monitor the CRC"³².

"It is perhaps in the activities aimed at fostering implementation of the CRC that Doek describes (Days of General Discussion, Recommendations, General Comments) that material can be found for assessing the enormous progress made. This includes contributions to the Optional Protocol on the Involvement of Children in Armed Conflicts adopted in 2000 or the UN studies on children and armed conflict and violence against children, in turn resulting in the appointment of Special Representatives on each topic. Efforts to provide guidance on the interpretation of the CRC through General Comments are also described, although the outcome of these documents remains to be evaluated. On a slightly different level, it is Van Bueren's contribution that evidence is found of achievements in the international human rights arena. It is fundamental to determine 'if a gauge is necessary to measure how far the international social movement of children for children has progressed in its attitude towards child citizenship, a valuable one is the attitude of civil society around the world to developing a complaints mechanism, to be used by children, to protect violations of their rights under the CRC. Objections expressed against the creation of a complaint mechanism at the time of CRC drafting, it is argued, are no longer sustainable today. Beside an examination of the content of the objections made in the past is outlined the advantages of a mechanism allowing communication to be heard by the CRC, Committee, not only at the state level but in the overall process of implementation worldwide and at the regional. Particular consideration, it is argued, needs to be given to promote child-sensitive procedures as well as make them accessible to most vulnerable children. The UN system has vigorously promoted the establishment of independent human rights bodies as a mechanism to help progress in the implementation of human rights obligations. The number of children's commissioner or ombudsperson offices established across the world since 1989 presents at first an indication of the success of the CRC in this regard. Yet the situation begs careful investigation with particular attention to the question of appropriation. Examination of the statutory role and remit of these offices discloses highly variable (including no) emphasis on CRC monitoring and implementation. Examination of their practices may on the other hand show a high level of commitment to the CRC despite an inauspicious statutory base. The 'English' Commissioner (that is, the Children's Commissioner with UK-wide responsibility for non-devolved matters and England-wide responsibility for others) is a case in point"³³.
The CRC was adopted by the UN General Assembly at an international level, on 20 November 1989. Without any doubt, one of the most debatable and important provisions of

³² Ibid

³³ Ibid

the CRC is Article 12, which provides the right of the child to be heard or express his or her opinion. Article 12 lies at the core of the convention which provides a way through which children can have the power to all other rights contained therein. The substance of this unique and innovative convention provision as well as its implementation forms the main focus³⁴. It is apparent that other human rights instruments have enforced the CRC in giving recognition to the principle in relation to the respect of views of the child which has mostly been done procedurally rather than substantially. For instance, at international level, Article 13 of the 1980 Hague Convention on the Civil Aspects of International Child Abduction. This provision is mirrored with the substantive provision under Article 12(1), therefore, reinforcing obligation on parties in order to ensure that all children who face problems of disabilities have same access to right to express views as children without disabilities³⁵. Therefore, it may be said that, there shall be no discrimination between children in participatory articles.

“The recognition and protection afforded to the child’s right to be heard at the international level has been reinforced to a large extent at the regional level, particularly in Europe and Africa. For example, according to Article 4.2 of the African Charter on the Rights and Welfare of the Child 1990 provides ‘for the views of the child to be heard either directly or through an impartial representative...and those views shall be taken into consideration by the relevant authority. The latter provision replicates the procedural protection afforded to children involved in judicial administrative proceedings as recognised under Article 12(2) of the CRC. The Council of Europe adopted the European Convention on the Exercise of Children’s Rights on 25 January 1996. While this convention is restricted to family proceedings before judicial authority it nonetheless recognises the child’s rights to be heard directly or indirectly in such proceedings. More recently, under Article 51(b) of the European Convention on the Adoption of Children (Revised) (2008) an adoption order shall not be granted without the...consent of the child considered by law as having sufficient understanding; a child shall be considered as have sufficient understanding on attaining an age which shall be prescribed by law and shall not be more than 14 years”³⁶.

Moreover, it is provided by Article 6 that in cases where the consent of the child is not required under Article 5 of the CRC, it is necessary for the child to be consulted and have his or her views be taken into consideration by keeping in mind his or her age and maturity. However, this provision is qualified by the possibility that such consultation may not play an important part in the best interest of the child which should be conducted as much far as possible³⁷.

“Following an inspection of these two provisions, it seems that together they operate like a rebuttable presumption. It is presumed at the age of 14 years old that these children are mature enough to consent to a decision being made about them concerning adoption. However, before reaching 14 years old they should have the right to be consulted, their views being considered in accordance with their age and maturity”³⁸.

“The consultative process is not, however, analogous to providing children with the opportunity to express their views in accordance with their age and maturity which thus fails to satisfy the requirements of Article 12 of the CRC. Consultation is often associated with a ‘top down’ approach to involvement-the issue is preselected and children are given information as to the decision being made. However, adults are not necessarily committed to taking the views of the child on board. As far as allowing the child to participate is

³⁴ Aisling Parkes, ‘Children and International Human Rights Law-The Right of the Child to be Heard’, Routledge 2013

³⁵ Ibid

³⁶ Ibid

³⁷ Ibid

³⁸ Ibid

concerned, this involves ensuring that children become actively engaged in the decision being made and taking their views seriously in accordance with their age and maturity. Thus, while this convention appears to offer a more flexible approach embracing children, it does run the risk however of becoming tokenistic rather than a realisation of the right of the child to be heard as required under the Article 12 of the CRC³⁹.

It has been pointed out that even though the CRC does not use the actual word ‘participation’, this particular principle term has become widely linked with Article 12 of the CRC which is known to respect the right of children to express their views or opinions. Even though, in recent times, this particular area of law may encounter different existing opinions as to what constitutes child participation by showing the multifaceted nature of this concept. According to some commentators, the view that child participation is shifting target has been described in various ways instead of been given a specific definition⁴⁰.

“According to assertion made by Hart, participation is a process by which decisions are shared which may impact a person’s life as well as impacting the community the child lives in. Therefore, it be said that, participation means affording children the children to express their views or opinions, which may in turn influence processes of decision-making and policies which affect the lives of the children. Indeed, there has been an acknowledgement that participation allows children to influences processes, decisions and policies that lead to greater realization of their rights⁴¹.”

“Article 12 is often mentioned under the banner of ‘the voice of the child’ or ‘the right to be heard’, ‘the right to participate’, and/or ‘the right to be consulted’. Lundy argues that each of these terms has the potential to undermine the impact of Article 12 as they convey an imperfect summary of what it states. Furthermore, it is vitally important that one does not confuse ‘choice’ with ‘voice’. In other words, Article 12 is not concerned with the ‘wishes’ of the child per se (as appears in some legislative provisions in some jurisdictions), but rather the opinion or views of the child on the matter concerned⁴².”

“A former chairperson of the Committee of the CRC, Jaap E Doek has highlighted the fact that Article 12 is ‘...seen as one of the pillars- together with articles 13 and 15-for the development of the implementation of the concept of child ‘participation’. Thus, it is imperative to remember that the child participation is much broader in nature as a concept than Article 12 provision. It embraces the idea that children need to be fully informed before they can express their views and they must be provided with alternative modes of expression, both of which are requirements of Article 13. Furthermore, children must be given the space to which to participate where they feel safe in doing so in accordance with Article 15. There are various elements which can influence peoples’ understanding of what child participation involves, including the level of child participation, the main area of the decision-making in which children may be involved, the nature of the participation activity itself and the children and young people involved⁴³.”

“The extent to which children participate varies depending on the decision-making processes concerned. Lansdown identifies three specific levels of engagement of children which can be applied in the overall context of any participatory activity: (i) consultative participation, where adults ultimately seek children’s views and expertise on specific issues; (ii) collaborative participation, which facilitates shared decision-making between adults and children; and (iii) child-led participation, where children are given the time and space to share ideas amongst themselves, identify any concerns they may have and advocate for themselves.

³⁹ Ibid

⁴⁰ Ibid

⁴¹ Ibid

⁴² Ibid

⁴³ Ibid

Indeed, the increasing importance attached to the principle of respect for the views of the child in contemporary society is evidenced by a proliferation of models of participation some of which are designed to gauge the level at which child participation occurs in practice. Many of these models are specifically geared towards determining the level of child participation in a particular project, a common thread which permeates each of these individual models is that none directly refers to the individual requirements of Article 12, 13 and 15 of the CRC and what they require under international children right's law. Thus, it is argued that the usefulness of these models in facilitating effective child participation is weakened because they do not specifically refer to the relevant provisions of the CRC"⁴⁴.

"Although not child-focused, the origins of a model of citizen participation emerged as early as 1969 when Sherry Arnstein, an urban planner from the United States developed the Ladder of Citizenship Participation. This ladder metaphor was adopted so that eight distinct rungs could represent the various degrees of involvements of 'have-nots' in decision-making, with each rung of the ladder corresponding to the level of citizenship participation in the determination of plans or programs and the delegation of the decision making-power"⁴⁵.

"Arnstein divided the eight rungs of Ladder of Citizenship Participation into three distinct categories: non-participation, degrees of tokenism and degrees of citizen power.

Manipulation and therapy, rungs one and two, were placed at the very bottom of the ladder, indicating that these were representative of non-participation. In this context, Arnstein asserted that the real objective of those in positions of power was not to encourage genuine participation in the planning of programs, but to allow that participants be educated and 'cured'. Progressing on from this, rungs three and four, informing and consultation, involved the marginalised groups of society being allowed to hear and to have a voice. However, these were branded as mere tokenism as these individuals lacked power to ensure that those in power would take their views into consideration. On the ladder of citizen participation, rung five represents placation, which is simply a higher level of tokenism since the basic rule allows the citizen to advise, but yet those in power ultimately retain the right to make the decision"⁴⁶.

"However, at the higher end of the ladder, Arnstein labelled the various degrees of citizen power: partnership, delegated power and citizen control. It was asserted by her that partnership allowed citizens to be involved and to negotiate in trade-offs with traditional power-holders; delegated power and citizen control allowed the citizen directly involved in the decision or full managerial power"⁴⁷.

Arnstein's model in relation to citizen participation as a blueprint for 'ladder of child participation' was adopted by Roger Hart in 1992. Hart confirmed the model to represent different levels of child participation in distinct projects. In comparison to the model of Arnstein, Hart came up with a system of participation of eight levels. However, unlike the level of Arnstein, the three lower levels represent the non-participation and the remaining five upper levels show different degrees of genuine participation. Therefore, in Hart's model there are representations of both participation and non-participation. However, unfortunately, Hart does not succeed in relating the levels of Hart's ladder to have been confirmed to be very practical in terms of helping practitioners to analyze and pursue towards elimination and kinds of non-participation in their work"⁴⁸.

Hart intermittently associates genuine participation with the participation of choice.

According to assertions by Hart, projects or programmes should be composed to the extent so that there is maximization of opportunities for children allowing them to participate to the

⁴⁴ Ibid

⁴⁵ Ibid

⁴⁶ Ibid

⁴⁷ Ibid

⁴⁸ Ibid

highest level of their ability as per their wish. Therefore, it would be apparent to conclude that the remaining five upper levels of Hart's ladder are representative of genuine participation, therefore, may comply with the CRC⁴⁹.

"The remaining five rungs of participation include: assigned but informed, consulted and informed; consulted and informed; adult-initiated, shared decisions with children; child initiated and directed; and child initiated, shared decisions with adults. The fourth rung of the ladder, assigned but informed, is known as social mobilisation. This requires that the children understand the objectives of the project and who made the decisions regarding their involvement and why. Child participants must have a role which is meaningful to them and they must volunteer for the project after the content of the project has been known to them. It is noteworthy that this rung, while the lowest form of genuine participation, is the only one which requires that children are informed of the project taking place. It is well accepted that that in order for a child meaningfully to express his or her views, at any level in accordance with Article 12 of the CRC, the provision of adequate information beforehand, as required by Article 13 is essential"⁵⁰.

"The fifth rung of the ladder, consulted and informed, involves adults consulting children, treating their own opinions seriously and taking them into account. The project is generally designed and run by adults. Article 12 of the CRC, requires that due weight be attributed to the views of children once expressed, in accordance with age and maturity. Thus, the provision of feedback is essential if participation is genuine so that children can see their views being taken seriously. The sixth rung of the ladder, adult-initiated, shared decisions with children, while run by adults, involves decisions being shared with the children. The most prevalent example of the seventh rung, child-initiated and directed, is that of children at play. However, as Hart notes it is more difficult to find examples of child-initiated community projects. This is mainly owing to the paternalistic attitudes of adults concerning the welfare of children and their inability or reluctance to respond positively to young people's own initiatives. The final rung of the ladder, child-initiated, shared decisions with adults, placed at the top of the ladder, seems to be more geared towards the older and more competent children involved in projects that they have designed and managed. Black asserts that Hart's ladder of participation provides a qualitative way of measuring the nature of child participation in projects and events. However, she draws attention to the fact that this model of participation is automatically limited in its applicability as it fails to relate the various degrees of participation to different environments with which the child interacts on a daily basis, such as the family, school and youth clubs"⁵¹.

Following the citation of Hart's ladder as an 'excellent metaphor', Treseder confirms about the difficulties associated with it. As per his assertion, there are limits in the choice for those trying to involve children as it is assumed by the ladder that child-initiated and directed participation is the overall aim for attempting to allow children to take in participation are mere steps which may help the ladder to achieve that goal. However, there was clarification by Hart in relation to this issue. When Hart refers to his ladder metaphor where the levels of the ladder are linked with genuine participation, he notices that all children may operate at one of the upper levels of the ladder. However, this factor will entirely depend on the individual abilities and interests of the children. According to Hart, this '...does not imply that any project where children are operating at level 4 is necessarily inferior to one where they are operating at level 8'⁵².

⁴⁹ Ibid

⁵⁰ Ibid

⁵¹ Ibid

⁵² Ibid

“Treseder has adopted and redesigned Hart’s ladder of participation. He categorises the five degrees of participation as different yet equal forms of good practice. He asserts that, in doing this, the most appropriate form or level of participation of may be chosen to suit each individual child’s environment. In 197, Treseder devised a manual directed towards professionals and organisations working with children and young people in different spheres on a daily basis. The primary objective of the manual is to help professionals and organisations working with children make ‘child empowerment a reality for all children’ so that they may contribute decisions which affect them as individuals and as a group. While this manual is not described explicitly as a model for participation, it does contain a number of guidelines aimed at training professionals to understand the concepts of participation and empowerment and methods through which these may be achieved. Treseder acknowledges the fact that these terms are interchangeable to a certain extent, although he draws a distinction with child participation being the process whereas empowerment is the outcome”⁵³.

Analogous to Hart, Treseder explicitly fails to relate the various levels of participation in regards to the provisions of participation of the CRC making Article 12 inclusive in the convention, yet the annual is collapsed into apparent levels of the process of participation. According to Treseder, it is feasible to ensure the involvement of children in any decision which may affect them as long as the movement is clearly delineated from beginning to end, by enabling all the participants involved knowing what can be awaited from the process. The idea of Treseder related to child participation is distinguished from other models of participation in the sense that precisely adjusted towards providing information to organisations whose wish is to ensure the inclusion of child participation in their policy⁵⁴.

“Stage 1 of the process of moving towards empowerment requires that all colleagues involved in the process of participation must agree on the proposed aims, objectives and expected outcomes of the participatory process. Two different ways are identified by Treseder in which members of the organisation may seek towards the involvement of children in the decision-making process. One such method is through consultation of children, which is considered by Treseder to be the first step away from non-participative organisation, in which case the overall aim is better to inform the decision of the organisation. Alternatively, the organisation may follow towards establishment of real establish real opportunities for children which may help them to contribute to the decision-making process, in which case they are more prepared to share power. He suggests that both processes are valid in terms of involving children in the decision-making process. However, it is pertinent that adults are very clear and honest with the children and young people about what they are in fact trying to achieve”⁵⁵.

“Treseder cites Hodgson who has identified five preconditions to successful empowerment. These include: access to those in power; access to relevant information; a genuine choice between distinctive options; a trusted independent person who will provide support, and if necessary, be a representative; and means of redress for appeal or complaint. Treseder suggests that in order to succeed at promoting participation of children and young people, they need to see how they may benefit from participation so that they may ‘sustain an interest in it’. He suggests that the way to encourage or promote continuing involvement in the participatory process is clearly to identify the personal benefits to be derived from the process, whether it is in a community or organisation. Some of these benefits include the

⁵³ Ibid

⁵⁴ Ibid

⁵⁵ Ibid

acquisition of new skills, experience for future employment, greater responsibility, new challenges and the opportunity to make new friends”⁵⁶.

“In terms of the initial involvement of children in a process, Treseder points out that the children involved should be provided with essential information, such as what they can really expect to be involved, a prerequisite which is in clear accordance with Article 13. He asserts that in the context of long-term involvement of the children in decision-making processes of an organisation, it all depends on the extent to which the organisation is prepared to hand over power and responsibility. Children and young people must be aware at the very outset of the extent to which they may be involved in a decision and they should be provided with detailed information on the manner in which the process will take place”⁵⁷.

“Shier’s model was not created in an attempt to supplant the work of Hart in the field of child participation. He devised an alternative model in the hope that it might serve as an additional tool for practitioners when dealing with the process of participation. Shier, on revisiting ‘Pathways to Participation’, has highlighted that this model does not make it compulsory for children to participate, and, if they do decide to participate, it should be in a manner that is suitable for the development and understanding of the children concerned”⁵⁸.

“In contrast to the models offered by both Arnstein and Hart, Shier’s model is concerned with participation only and is not with any specific level of non-participation. Thus, the five levels of child participation include: (1) children are listened to; (2) children are supported in expressing their views; (3) children’s views are taken into account; (4) children are involved in decision-making processes; (5) children share power and responsibility for decision-making. At each of these levels of participation, Shier identifies three degrees of commitment of the individuals or organisations working with children to the process of participation. These include openings, opportunities and obligations. Unlike both Hart and Treseder, Shier makes explicit reference to how this model of participation is associated with Article 12 of the CRC. He places emphasis on the fact that, whole all these levels of this model of participation that is required under the CRC is not reached at level 3”⁵⁹.

“Level 1 of this alternative model of participation comes into operation when a child decides of his or her own accord to express an opinion, in which case it should be carefully listened to by the responsible adult. The first degree of commitment required here from the adult is that he or she is ready to listen, thus providing an opening for participation. The second degree of commitment is that the adult provides the opportunity for the child to participate and work in a manner that enables adults to listen. The final degree of commitment demands that the actual practice of listening to children becomes the norm rather than the exception and is illustrated into a formal policy of the organisation working with children”⁶⁰.

“According to level 2 of Shier’s model, it is promoted that children are upheld in expressing their views. Similar to level 1, it is required that the primary stage of commitment has a requirement that the worker or institution be ready to take action which may help the children to express their views. The second stage of commitment affirms that children must be provided opportunities enabling them to express views with the age-appropriate approaches with the children, including comprehensive skills of communication that will be required achieving adequately achieving the views or opinions of all children, including such children whose language may not fit with the specific needs of specific group of children, including the very young, children suffering from disabilities and children from other countries.

⁵⁶ Ibid

⁵⁷ Ibid

⁵⁸ Ibid

⁵⁹ Ibid

⁶⁰ Ibid

Analogous to level 1, it is required by the third stage of the commitment that working this way may be a made a policy of this organisation”⁶¹.

Level 3 requires that the opinions or the views of the child are taken into account. According to Shier, this level of participation is the minimum requirement in order to implement Article 12 of the CRC. It is essentially demanded by Article 12 that the child is given opportunity to express their views or opinions concerning the child whether that particular child wishes to do so and whose views must be taken into account. However, as previously stated, adults often misinterpret that a child is entitled to express their views or opinions, as they consider that that if the child provides his or her views, then those views must be put to effect.

However, this view is miscomprehended in that, given that there are requirements for the views of the child to be taken into account, it is required by Article 12 that the views of the child must be given due weight or considering age and maturity of the child. Adults do not have the obligation to take into account the views of the child if they think that it would not be reasonable under the specific occurrence. However, it is important that in certain situations, the child is notified as to why his or her views were not taken into consideration towards indicating the final outcome of the decision⁶².

According to the model belonging to Shier, the opening or the first degree of commitment once the views or the opinions of the child are accessible to be taken into account. As per the second degree of the commitment, the opportunity accelerates when the institution owns a decision-making process which may help to enable views of the child to be taken into consideration. Finally, the third degree of commitment is accountability that is created when the institution composes its policy carry out Article 12 of the CRC by establishing effectively that a child’s views are given importance for the decision-making of the final outcome⁶³.

It is acknowledged by Shier that the difference between the two levels, i.e., level 4 and level 5 is more likely to deal with a question of degree in that matter level 4 require the children to become passionately involved in a process of decision-making but without any real power over the decisions being made, however in Article 5 it is necessary for there to be definitive requirement that adults share the greater power of give some of them away. The opening starts to appear from level 5 when the worker or the institution is ready to split the power of decision-making with the children. There can be seen a rise in opportunities when there is a proceeding that allows this to happen, and therefore, an understanding is created when it becomes the policy belonging to the institution children and adults contribute to the same power along with the liability that comes with it. Shier supports his model on levels of participation exclusively which affects communication between children and adults and therefore, Shier’s model is different from Hart’s model of participation as it fails to incorporate a level where children freely of adults⁶⁴.

“Indeed Shier notes that both levels 3 and 4 go above and beyond the scope of Article 12 of the CRC, in that the latter does not require that children be involved at the actual point of decision-making or that adults have to share their power with children. Arguably, through the child expressing his or her views on the decision that has to be made, this is actual involvement of the child at the point of decision-making as long as those views are taken into account. In relation to the fifth level of participation under Shier’s model, in reality, this would appear to be directly concerned with one group of children, specifically those of an age and maturity at which all adults will accept they are capable of sharing a decision and perhaps exercising responsibility by acting in a competent manner. Thus, it would seem that the

⁶¹ Ibid

⁶² Ibid

⁶³ Ibid

⁶⁴ Ibid

various levels of participation are moulded to suit the individual child and his or her age and maturity at certain stages of life”⁶⁵.

“In 2007, Laura Lundy proposed a new model of child participation for conceptualising Article 12 in the context of educational decision-making specifically. This new model requires the consideration of four key elements: (1) space (children must be given the opportunity to express their views); (2) voice (children must be facilitated to express their views); (3) audience (the view must be listened to); (4) influence (the view must be acted upon, as appropriate). Lundy notes that all of these elements are inherently interrelated with an overlap space and voice on the one hand and audience and influence on the other. This model was designed specifically with Article 12 in mind, reflecting the chronology that exists within the provision. Thus, the first stage involves ensuring the child’s right to express a view, and the second requires that the view be given due weight in accordance with age and maturity of the particular child in question. Furthermore, once the child is kept informed of the extent of his or her influence, the processes begin again and again, the latter a specific acknowledgment of the fact that these decision-making processes are rarely static. Finally, Lundy’s model takes into consideration the other key CRC provisions which can have a significant impact on the extent to which children contribute to the decision-making process. These include: Article 2 (non-discrimination); Article 3 (best interests); Article 5 (right to guidance and evolving capacities); Article 13 (freedom of expression and to seek, receive and impart information); and finally, Article 19 (the right to protection from abuse)”⁶⁶.

It is clear that according to participatory provisions of the CRC and the text of Article 12 specifically, the right of the child to express himself or herself must be adhered to in all areas of the child’s life and not just a local level decision-making or within the decisions of the children’s organisation. The most predominant and influential areas within which the child should be provided an open opportunity to express views is at home in the family and at school, where children spend majority of their childhood. This has been acknowledged by Kirby and Gibbs, who highlight the fact that children interact most with adults in everyday interactions such as the classroom, the playground, and at home⁶⁷.

“Thus, it is clear that any model designed to gauge the extent to which a child participates in society should be equally applicable to all children and be capable of application to all spheres of a child’s life, regardless of his or her age. For the most part, the older models of child participation examined above appear to apply a hierarchical standard to the level at which a child participates, whether in the form of a ladder or otherwise. In practical terms, this will almost always mean that the older child is the higher level of child participation. Furthermore, as argued by Kirby and Gibbs, these models are based on a belief that each initiative designed to facilitate participation can be assigned one level of participation. Indeed, these models stop short of identifying how children can make decisions and become participants and, indeed, how adults should respond to this. A general model of child participation such as proposed by Lundy, which encapsulates all the basic elements of Articles 2, 3, 5, 12, 13, 15 and 19 and is, thus, CRC-compliant, clearly provides a better a better benchmark for the more traditional setting such as home, which in time could be built upon adults and children who are involved in the process of child participation. As a result, all children, regardless of all age and from all cultures, would be capable of participating in all areas of their lives to a basic, yet acceptable extent, which could be built upon in future”⁶⁸. The formation of a basic arrangement for child participation at all levels should include initial focus of attention, where is may be possible to adapted in order to ensure suitability of child

⁶⁵ Ibid

⁶⁶ Ibid

⁶⁷ Ibid

⁶⁸ Ibid

participation at all levels. Undeniably, the model of participation belonging to Lundy would seem to come adjacent to accomplish this as it is contemplative of Article 12 and the other significant provisions related to the participatory articles of the CRC⁶⁹.

“Irrespective of what model child participation is chosen, it should be CRC-compliant and encapsulate all the essential requirements of Article 12. This would present a minimum standard for a basic yet more widespread ideal of child participation in society. Any such model should embrace features such as the right of children to be fully informed of the project or decision concerned; real opportunities provided for the involvement of children in the process; the encouragement and facilitation of all children capable of forming views to take part in the relevant project or decision either directly or indirectly through a friend or a family member, ensuring that children express themselves voluntarily without fear or constraint, giving due weight to the views of the child in accordance with his or her age and maturity and the provision of feedback to children following the decision-making process or the relevant project”⁷⁰.

“In the context of the models of participation, the following factors are essential in regards to the context of creating a model of participation which will actively mirror Article 12 of the CRC. Principally, this model of participation must be equally applicable to all, regardless of factors such as age, gender, race, disability and family status, in accordance with Article 2 of the CRC and the principle of non-discrimination.

“In the context of participation models, the following points are important in the context of creating a model of participation which will successfully reflect Article 12. Primarily, this model of participation must be equally applicable to all, regardless of factors such as age, gender, race, disability and family status, in accordance with Article 2 of the CRC and the principle of non-discrimination. Similarly, it must be capable of application to children in spheres of their lives including within the home, in school, in the community, at local level, at national level and at international level. Moreover, it is imperative that right to be informed of the circumstances surrounding the decision which is to be made should be an integral part of any model of participation if it is to be effective”⁷¹.

A unique characteristic that was attributed to the model of participation by Hart was clear identification, professionals cooperating with children, in relation to instruments of non-participation. The qualification for action towards the identification of action of non-participation influential, as whose affairs or consultations are deemed to be regarded as tokenistic, manipulative or decorative in nature, which have been approved frequently by the adults in the past, which are deserted and disposed off to a certain extent from the outset⁷².

“It is arguable that all of the models examined are too restrictive in their application, as they tend to concentrate on the right of the child to contribute to decisions made in children’s organisations, in an educational setting or, indeed, at local level. The scope of their application fails to extend to the other areas of child’s rights as is required under Article 12 of the CRC, such as within the family, school and in the community. Thus, it is clear that there is a need for creation of a basic model of participation which is reflective of the main characteristics of this fundamental provision. It is unfortunate that the Committee of the CRC failed to suggest a suitable model of participation in the context of its general comment on Article 12 on 2009. Having said that, however, it is important to technically remember the CRC is dated document at this point in time and so the considerations for effective child participation now go beyond and above the provisions of the CRC. Perhaps attention should

⁶⁹ Ibid

⁷⁰ Ibid

⁷¹ Ibid

⁷² Ibid

be given to the design of a similar model specifically designed for adults, the aim of which is to ensure that they effectively listen to and hear what the children are saying”⁷³.

“The nature of child participation and the extent to which it is of influence will differ according to the type of the decision being made. For example, participation will look very different in the context of the decisions made being made in the civil sphere. Moreover, participation will vary to some extent depending on whether decisions are being made involving children within the private and public spheres. Thirdly, the scope of participation will vary according to nature of the participatory activity. For, instance, one-off ad hoc event, which includes a small group of preselected children runs the danger of being tokenistic, while including children in simple decisions made within the family on a daily basis might prove for more genuine and fruitful in terms of the extent of participation. Finally, the nature and extent of participation will be influenced by personal circumstances of the children who partake in the relevant activities and participatory processes. The personal circumstances of children who will vary according to age, maturity, ethnicity, culture and gender, as well as their economic circumstances. In terms of the authenticity of child participation, it is important to be aware that it can be risk of being deemed adult-centric, and is in danger of being imposed rather than invited. Furthermore, events that are designed to be participatory can be run in ways which are not child-appropriate or child-friendly”⁷⁴.

Therefore, it may be said that child’s participation is a debatable issue so far which is differently interpreted by different scholars.

Implementation of Article 12 in the USA

It has been positioned by the society that children are vulnerable members of the society. By shifting away from traditionalist approach of rights of children which are treated as purely passive objects of the jurisdiction of parents and governments, the CRC has the capability of painting a modernized and composite vision of children who are in need of protection but also who enjoy rights as individuals⁷⁵.

The CRC is document which is both legal and normative in nature. As the CRC being a legally binding document, every member of the United Nations (UN) has ensured ratification, but for a noteworthy exception: the United States. By consequence, the United States is acted as a target boosting a push from parties at home and abroad to ensure the ratification of the CRC, by notably following a report that has been submitted to the UN Committee on the Rights of the Child ensuring compliance with the United States along with the optional protocols of the CRC⁷⁶.

“While the United States is a signatory to the CRC, and the US government has in recent years signaled its intent to seek ratification of the CRC, efforts at ratification have stalled in Congress. The failure to ratify the CRC seems incongruous with the United States’ leading role in drafting the CRC and promoting human rights abroad. Part of the reluctance to ratify is grounded in an enduring American hostility to international law. Much of the reluctance, however, hinges upon the CRC itself and its implications. After all, the CRC is also a normative, aspirational document, one that seeks to define a universal conception of the rights and position of children in the world, just as the U.S. law is grappling with increasingly

⁷³ Ibid

⁷⁴ Ibid

⁷⁵ Soo Lee Jeep, ‘A CHILD’S VOICE VS. A PARENT’S CONTROL: RESOLVING A TENSION BETWEEN THE CONVENTION ON THE RIGHTS OF THE CHILD AND U.S. LAW’, Volume 117, Issue 687, Columbia Law Review (2007)

⁷⁶ Ibid

complex-and-often perplexing-the role of children in the law. The time is therefore ripe for a serious inquiry into whether and how the United States might ratify the CRC”⁷⁷.

This Note follows on towards the help to settle whether the law of the United States is different whether it is different from the CRC by working on representational issue: the relationship of the rights of participation with the parents under the U.S. law. The U.S. law considers the rights of parents to control the upbringing of their children. Since the CRC potentially gives children the power or right to express their views. This delegates the powers from the parents to their children. Article 12 of the CRC which deals with a child’s participation is regarded as a potent threat to the U.S. law. However, there is a debate that the United States cannot exclude Article 12 of the CRC since it has ratified the Convention. Therefore, it is important to examine the full implication of Article 12 and its stated conflicts with the U.S. Law in order to determine whether the United States may feel ready and comfortable towards the ratification of the CRC⁷⁸.

“Commentary on U.S. ratification of the CRC generally fails to examine the legal implications of Article 12 for the U.S. parental rights. This Note helps to bridge this gap. Part I explains the meaning of Article 12 and concern about ratification, focusing on parental rights. Part II then examines relevant laws in the United States on family law proceedings, medical decision-making and psychiatric commitment comparing the three areas to the laws of other common law states that have ratified the CRC, in order to obtain greater clarity about the tension between the children’s participation rights and parental authority. Finally, Part III provides suggestions on how to bring U.S. law into greater conformity with the CRC. Ultimately, this Note concludes that the conflict between parental rights and Article 12 is reconcilable and that, in fact it presents a welcome opportunity for reform”⁷⁹.

Article 12 and its relevance to U.S. Law

“This Note grapples with the legal implications to the United States to adopt Article 12 specifically. To sketch a better picture of Article 12 as law, the first section of the Note contextualizes Article 12 by providing its most relevant background, namely the drafting history and the official UN interpretation of the CRC. The second section then briefly describes traditional perceptions of the CRC in comparison to current U.S. law including the tension between a child’s right to participate and parent’s right to decide for the child. As this part shows, U.S. jurisprudence on paternal rights is, at least in a broad sense, in some tension with central feature of the CRC-Article 12”⁸⁰.

Article 12 in context

“The CRC is one of a handful of critical international human rights treaties. Following ten years of extensive negotiations aimed at producing an universal document that would best reflect a consensus diverse legal systems and cultures, the CRC opened for signature On November 29, 1989, and became the most popularly and rapidly human rights treaty to date. At least part of its popularity is attributable to the CRC’s conscious inclusiveness. Its language is broad and speaks in principles, allowing for variation in implementation, rather than imposing a code of rules. In addition, the treaty system encourages voluntary implementation, rather than imposing a code of rules. In addition, the treaty system encourages voluntary implementation rather than coercive enforcement; given its weak

⁷⁷ ibid

⁷⁸ ibid

⁷⁹ ibid

⁸⁰ ibid

enforcement mechanisms, the CRC focuses on education, facilitation, and cooperation of the parties rather than enforcement”⁸¹.

Chapter 4

Economic, Social and Cultural Rights

“Economic, social and cultural rights are those rights relating to the workplace, social security, family life, participation in cultural life, and, access to housing, food, water, health care and education. Although economic, social and cultural rights may be expressed differently from country to country or from one instrument to another”⁸².

“Failure to protect economic, social and cultural rights may have the following consequences. Firstly, the denial of economic, social and cultural rights may have devastating effects on forced displacement or displacement which can result in homelessness, the loss of livelihood and the destruction of social network, and have devastating psychological effects.

Malnutrition has a clear health impact, particularly on children; it affects all their organs for life, including developing their brain, liver and heart, as well as their immune system.

Secondly, denying economic, social and cultural rights can affect large number of people. For example, diarrheal dehydration caused by a lack of safe drinking water claims the lives of nearly 2 million children every year and has killed more children in the past 10 years than all the people who lost lives in the World War 2. Thirdly, gross violations of economic, social and cultural rights have been among the root causes of conflicts, and failure to address systematic discrimination and inequities in the enjoyment of these rights can undermine the recovery from conflict. For example, discriminating in access to employment, using education as tool for propaganda, forcibly evicting communities from their homes, withholding food aid from political opponents and poisoning water sources are all abuses of economic, social and cultural rights that have fed conflict in the past. Finally, the denial of economic, social and cultural rights can lead to violation of other human rights. Such as, it is often harder for children who cannot read and write to find work in the future, to take part in political activities when they grow old or to exercise their freedom of expression. Failing to protect child’s right to adequate housing can make the child more vulnerable to domestic violence, as he or she might have to choose between remaining in an abusive home or becoming homeless”⁸³.

It is required by the ICESCR that the States need to take maximum availability of their resources which may help the achievement towards the progressive of full realization of economic, social and cultural rights. It is required by the Covenant towards the requirement by States to protect identical rights between children towards the enjoyment of these rights. According to other constitutions or treaties the word ‘obligation’ is defined differently which is even incorporates specifically by the State, such as acceptance of legislation or the advancement of these rights in public policies. It is necessary to analyze the obligations of the States. These obligations are often categorized into three categories: to respect, to protect and to fulfill economic and social rights⁸⁴.

Special Duties- Convention on the Rights of a Child

“Even though there are international treaties in general dealing with health, there are some specific treaties dealing with particular circumstances. Children because of their diminutive

⁸¹ ibid

⁸² Frequently Asked Questions on Economic, Social and Cultural Rights, Human Rights of the United Nations High Commission for Human Rights

⁸³ ibid

⁸⁴ ibid

size, , suffer the greatest impact from the environment; however, they play a minor role in environmental degradation, and they have little power to effect change. Article 24 of the Convention of the Rights of the Child states that a child has a right to enjoy the highest attainable standard of health. Among the measures by which States are to implement this right combat disease and malnutrition...through, inter alia...the provision of adequate foods and clean-drinking water, taking into consideration the danger and the risks of environmental pollution. Here, for the first time in human rights treaty, there is explicit recognition of the connection between health, of an individual and the state of the environment. With children, explicit reference to environmental issues is justified because of the risk nature of children and infants. In 1992, UNICEF reported that each year fourteen million children under the age of five will die from common, mostly preventable diseases and malnutrition. Many of these deaths are from environmental causes. In Honduras, for example, one-third of childhood deaths are due to diarrhea disease, which may result from unsafe water supplies, inadequate sanitations and poor hygiene”⁸⁵.

Chapter 5

Progressive Realization

“The concept of ‘progressive realization’ is described as a central aspect of States’ obligations in connection with economic, social and cultural rights under international human rights treaties. As its foundation accountability towards taking convenient is the establishment of the full realization of economic, social and cultural rights to the maximum of their available resources. The reference to ‘resource availability’ reflects recognition that realization of these rights can be hampered by a lack of resources and-financial and others-available to it. Many national constitutions also allow for the progressive realization of social, economic and cultural rights”⁸⁶.

The theory of progressive realization is sometimes misrepresented as if States did not have to protect economic, social and cultural rights until the availability of sufficient resources. On the contrast approach, an immediate obligation is imposed by the treaties in order to take applicable measures to take appropriate steps towards the realization of economic, social and cultural rights. A shortage of resources cannot justify inaction or undetermined suspension of measures towards implementation of these rights. It is the obligation of the States to demonstrate that they are putting every effort to ensure improvement the enjoyment of economic, social and cultural rights, even when there are limited resources. For instance, irrespective of the resources available to it, a State should, as a matter of preference, seek to ensure that everyone has access to, at least, minimum levels of rights and, target programmes to protect the marginalized, the disadvantaged and the poor⁸⁷.

“The term ‘progressive realization’ has been defined by the Covenant on Economic, Social and Cultural Rights (CESCR) in General Comment 3”⁸⁸.

Progressive realization therefore gives introduction to ingredient of some resilience in terms of the States’ obligation. In a nutshell, the expression recognises the full realization of socio-economic rights that generally would not be achieved in a precise span of time. Therefore it may be said that, the accountability is demanded to be implied by the State where it has to move hastily and adequately towards full realization⁸⁹.

⁸⁵ Eric Engle, ‘THE ALIEN TORT STATUTE AND THE TORTURE VICTIMS’ PROTECTION ACT: JURISDICTIONAL FOUNDATIONS AND PROCEDURAL OBSTACLES’, Volume 14, Issue 1, WILLAMLETTE J.INT’L.L & DISP. RESOL (2006)

⁸⁶ibid

⁸⁷ Ibid

⁸⁸ UN Committee on Economic Social and Cultural Rights (CESCR), General Comment No.3 (1990)

⁸⁹ CESCR, General Comment No.3, The Nature of States Parties’ Obligations, para.44; and General Comment No. 18 The Right to Work

Notwithstanding, some palpable accountabilities are included by the help of progressive realization on States. It is declared that there has been an observation by the CESCR regarding taking steps towards progressive realization where the steps must be taken in reasonable short span of time after the ICESCR has entered into force for the State concerned. However, there is less resilience in terms of progressive realization where the matter is in relation to the right to education. States have accountability towards adopting a plan of action, within a feasible number of years where the time span must be included in the plan. Therefore, it is necessary for the plan to definitely set out a sequence of pointed implementation of dates for each stage of the plan in relation to progressive realization⁹⁰. Deliberate retrospective measures are not permissible by the implication of progressive realization which has to be confirmed fully referring the importance of totality of rights. The CESCR has made a declaration that durable supposition of impermissibility of any retrogressive measures taken in regards to such rights such right to water and education; and any retrogressive measure should not principally be taken into consideration related to the rights of work. Finally, it would be necessary to ensure that the retrogressive measures are positively rationalized⁹¹.

In relation to the rationalization of retrogressive measures, it is declared by Liebenberg that such measures may be admissible where, for instance, a State can demonstrate retrogressive measures are mandatory in order to achieve fairness in the realization of rights. However, she further cautions that where retrogressive measures result in deprivation of vulnerable and marginalized groups ensuring entry to fundamental social services where there is necessity of weightily justification⁹².

The CESCR has further given interpretation in relation to progressive realization in other general comments. For instance, when the matter is in relation to the right to education, it is stated by the CESCR that progressive realization of this right has the meaning that States having a particular and extended obligation to move as adequately and expeditiously as possible towards full realization⁹³. There has been a further observation by the CESCR that progressive introduction of elementary education must also take solid steps towards achievement of more advanced and secondary education⁹⁴. It may therefore be said that progressive realization goes beyond achievement of the minimal fundamental levels of a right. Furthermore, the requirement of progressive realization in relation to the right to social security is that a State has all-inclusive social security taking place by carrying out usual revision in order to ensure that it carries out consistency with the social security⁹⁵.

It is imperative for the States to take appropriate legislative and administrative measures in order to ensure implementation of the rights recognized within the CRC. In regards to the economic, social and cultural rights it is necessary for the States towards the maximization of such measures of their applicable resources, and where necessary, within the scheme of international cooperation⁹⁶.

“States are supported by the current general comment in regards to the implementation of Article 4 in relation to budgets for the public. The general comment accountabilities by State parties and makes suggestions on the realization of all the rights under the Convention, in

⁹⁰ CESCR, General Comment No.11, Plans of Action for Primary Education , para.10

⁹¹ CESCR, General Comment No.19, The Right to Social Security, , 4 February 2006, para 42

⁹² Sandra Liebenberg, Socio-Economic Rights Adjudication under a Transformative Constitution, Juta Academic 2010

⁹³ CESCR, General Comment No.13, The Right to Education, para 44

⁹⁴ CESCR, General Comment No .13, The Right to Education para 14

⁹⁵ CESCR, General Comment 19, The Right to Social Security, para 68

⁹⁶ Convention on the Rights of the Child, CRC/C/GC/19, Distr: General, 20 July 2016, Original: English
Committee on the Rights of the Child, General Comment No. 19 (2016) on public budgeting for the realization of children’s rights

particular for those children who face unsafe positions, through effective, efficient, equitable transparent and sustainable public decision-making”⁹⁷.

Taking into consideration that Article 4 deals with all the rights of the child, where all those rights can be influenced by the public budgets. This is where the current general comment comes into action to the Convention and its Optional Protocols. The States parties provides with a framework safeguarding that public budgets help by realization of these rights by proper contribution⁹⁸.

When indication the words to ‘child’ or ‘children’, it is apparent that general comment consists of all persons of any gender under the following criteria: that those persons under the age of 18 can be influences by the public budget-related decisions directly or indirectly, positively or negatively. Children in unsafe situations are in particular who are affected to the violation of their rights. There are some instances of such group of children: children living in underdevelopment, children living in alternative care and children in conflict with the law⁹⁹. The present Convention presents recognition of rights including civil, political, economic, social and cultural rights. The State parties should be accountable towards immediate realization of civil and political rights leading to carrying out of social and cultural rights to the maximum extent of their resources. This clearly demonstrates that the full realization of rights should undoubtedly be attained progressively¹⁰⁰.

It is required to provide close attention to the implementation of the rights of the child to all four stages of public budget process: planning, enacting, executing and following-up. The States parties should consider the entire budget process, in conformity with the general principle of the Convention and the budgetary principles outlined in the current general comment¹⁰¹.

Chapter 6

Obligations

Even though States may realize economic, social and cultural rights progressively, they must also take immediate action, irrespective of the resources they have, in the following areas: States must ensure prohibition of discrimination in for instance, health care or education. Discrimination on the basis of race, colour, sex, language, religion, views, national or social origin, property, birth or other status must be prohibited¹⁰².

There are some economic, social and cultural rights that do not need important resources. For instance, there is a liability towards protection of children and young persons from economic exploitations, are not in need of important resources which should be considered promptly. Other rights do require resources but are drawn up in such way not be prone to progressive realization. For instance, State parties there is a strict limit of two years to the international Covenant for developing plan of action in order to establish the provision complimentary and compulsory education for all children¹⁰³.

It is the duty of the States to make non-stop attempts to enjoyment of economic, social and cultural rights under the progressive realization. In other words, while their full realization may be brought about progressively, it must be ensured that the steps are taken within a short span of time. It is necessary for these steps to be deliberated, detailed and focused as clearly

⁹⁷ Ibid

⁹⁸ Ibid

⁹⁹ Ibid

¹⁰⁰ Ibid

¹⁰¹ Ibid

¹⁰² UNITED NATIONS HUMAN RIGHTS, ‘Key concepts on ESCRs-what are the obligations of States on economic, social and cultural rights

¹⁰³ Ibid

as possible. This should be done by applying all appropriate means, only by the adoption of legislative measures¹⁰⁴.

It is not allowed by States to allow the remaining protection of economic, social and cultural rights to depreciate unless solid approvals are seen for a retrogressive measure. In order to confirm it, it is the responsibility of the State to expose that it embraced the measure only after attentively contemplating all the options. This must be done by examining the impact and using applicable resources to the full extent¹⁰⁵.

There are liabilities which are considered to be of prompt aftermath to meet the minimum levels of each right under the International covenant on Economic, Social and Cultural Rights, which are deemed as minimum core obligations. Given that a State fails to meet the important level of these rights due to lack of resources, it is the responsibility of the State that it had made adequate attempt to use all resources to satisfy, as a matter of preference, these core obligations. Even during such a situation where a State has insufficient resources at its disposal, it is necessary that the Government proposes low-cost and addressed strategies in order to take care of those who are most in need so that its defined resources are used adequately and accurately¹⁰⁶.

It is important for the courts to address demands by individuals of breaches of economic, social and cultural rights, it is necessary to make sure Government to ensure administration of the Government of normally on track making the process easy to carry out the progressive realization of these rights. This is exceptionally necessary to avoid economic, social and cultural rights being refused. There has a development in different techniques in the recent years to measure whether then if how, there is progress made in realization to economic, social and cultural rights by a State¹⁰⁷.

“NHRIs, intergovernmental organizations, experts and civil society organizations are increasing examining ways to monitor progressive realization of economic, social and cultural rights through the use of statistical indicators, and analysis of national law and policy as well as budgets. The following are examples of ways to monitor the realization economic, social and cultural rights and the efforts made by the State to meet its obligations towards these rights. They are identifying trends-such as measuring changes in literacy rates and gender breakdown of educational attainment over time; Analyzing legal provisions and policies legal provisions and policies- such as constitutional provisions, national strategies, law and policies aiming to realize the right to food to see whether they are consistent with international law and are implemented; Analysis budgets-in particular, trends in budget allocations. Unless fully justified, a decrease in budget allocation may indicate a failure to take steps towards the progressive realization of a particular right”¹⁰⁸.

It is explicitly a necessity to monitor budget when the realization of economic, social and cultural rights are evaluated. National budgets are fundamental political reports mirroring the preferences of the States including the level of resources of the community. Therefore it may be said that, evaluating is compatible for monitoring efforts towards the progressive realization of rights, incorporating the extent to which the most competent use is made of the available of resources. Programmes which are underfund manifest discrepancies when the use of public funds is in question when considering particular groups and regions or important declines in funding precise sectors may indicate that the State has failed to realize economic, social and cultural rights progressively¹⁰⁹.

¹⁰⁴ *ibid*

¹⁰⁵ *ibid*

¹⁰⁶ *ibid*

¹⁰⁷ *ibid*

¹⁰⁸ *ibid*

¹⁰⁹ *ibid*

Given the attention related to the resources towards achieving economic, social and cultural rights, keeping an eye needs to be allocated in order for the Government to exercise its power in relation to implementation of the CRC, not only the scope a specific right is enjoyed. Measuring the distribution of economic, social and cultural can help the exercise of the Government to be measured. For instance, a Government with defined resources might dedicate more effort towards the meeting of economic, social and cultural rights compared to a Government of a well-off country; even the population of the latter has greater capabilities to enjoy the rights vast extent. A slow progress in realization of rights can be seen by States who have fewer resources¹¹⁰.

The basic aspect of a State's accountability in connection with economic, social and cultural rights is to accomplish progressively the full realization of rights under international human rights treaties. It is the essential obligation to ensure that appropriate measures are taken towards the full realization of economic, social and cultural rights to the availability of the maximum resources. In order to reference 'resource availability' a realization is recognised that the realization of these rights may be affected a deficiency of resources which can only be accomplished over a specific amount of time. It equally means that the State's conformity with its obligation to take proper measures is examined in the light of the resources. It is allowed by many national constitutions the progressive realization in relation to economic, social and cultural rights¹¹¹.

Even though States may realize economic, social and cultural rights progressively, they also have a responsibility of taking prompt action, regardless of the resources that are existed in five areas: eradication of discrimination, economic, social and cultural rights not subject to progressive realization, responsibility to 'take steps', non-retrogressive measures and minimum essential obligations¹¹².

Chapter 7

Conclusion

In conclusion, it can be said that the CRC is one of the most essential international human rights treaties. The CRC was introduced by the General Assembly in 1989. The CRC is an essential document which gives children to act as independent right-holder. The issues placed within the CRC were introduced by the Director of UNICEF as 'Magna Carta for Children'. However, the child being an independent right-holder was not such a new concept. One of the earliest international human rights instruments was the Declarations of the Rights of the child which was passes by the League of Nations in 1924.

As per the literature review, the philosophical foundation of the rights of children is very debatable. There seems to be a variety of philosophical foundations of human rights which could be expanded towards the application of the philosophical application of child rights. Although it can be stated that, the classical levels of philosophical human rights may not directly deal with rights of the child. However, the fact that the rights of the child are fundamental and integral part of the international treaties is apparent. There seems to be a link between the broad foundation of human rights and the philosophical foundation of human rights.

According to the CRC, the term 'best interests of the child' is of importance. It applies to the principles that are used to determine what will be best for a child in a specific situation. In

¹¹⁰ Ibid

¹¹¹ Key Concepts on ESCRs- What are the obligations of States on economic, social and cultural rights? UNITED NATIONS HUMAN RIGHTS COMMISSION, OFFICE OF THE HIGH COMMISSION

¹¹² Ibid

other words, the assessment of the right of the child is applied in order to regulate which order and services are going to best serve the child.

As mentioned above, the CRC is one of the most debatable international instruments.

However, the most debatable and discussed issue of the CRC is the participatory rights as mentioned in Article 12 of the CRC. The participatory rights of a child clearly states that a child has the right to express their opinions or views in related to a particular matter which may influence decisions which may involve their lives. Child participation is such a complicated issue that this particular area has been debated by various scholars or experts as mentioned above. In a nutshell, it means that children have the freedom of expression as per the compliance of participatory rights under the CRC.

However, there is an exception of the participatory rights which is the United States. The United States gives full power to the parents to take decisions the behalf of their children. This is somewhat debatable as the CRC has been by the United States; therefore generally speaking the United States is bound by it and therefore must act towards the implementation of the participatory rights.

There are several of rights that are incorporated within the economic, social and cultural rights. Such rights are the right to an adequate standard of living, right to work, right to food, right to housing, the right to mental and physical health, the right to education, the right to social security and the right to a healthy environment. These are rights are part of the human rights body which flourished after the aftermath of the World War 2.

The most important human rights treaties where the economic, social and cultural rights are incorporated in are the Universal Declaration of Human Rights (UDHR) 1924, the International Covenant on Civil and Political Rights (ICCPR) and ICESCR. Other than those fundamental treaties, these rights are also interpreted in the CRC, Convention on the Elimination of Discrimination of Women (CEDAW) and Convention on the Elimination of All Forms of Racial Discrimination (CERD).

The theory of progressive realization is defined as an approach of obligations by the States in relation to the economic, social and cultural rights under the human rights treaties. The main motive of the progressive realization is to uphold economic, social and cultural rights by using the maximum of their resources. States cannot justify not promoting economic, social and cultural rights due to lack of resources. It is the responsibility of the States to ensure that they are putting effort the rights are thoroughly enjoyed by the people, in this case children. Therefore, the States have obligation towards proper access to the progressive realization by the people.

Apart from the realization of economic, social and cultural rights, the States are bound to take prompt actions regardless of the resources they have. Such areas are as follows: the States must ensure prevention of discrimination in factors such as health care and education. There must also be a prevention of discrimination on issue such race, colour, sex, language, religion, views, national or social origin, property, birth or other status. Moreover, in order analyze the meaning of obligations by the States they are sometimes described in the three following headings: to respect (refrain from interference with the rights), to protect (preventing others from interference with the enjoyment of the right) and to fulfill (adopting proper measures towards the realization of economic, social and cultural rights).

Therefore, it is clear that States have obligations towards the implementation of the CRC, given that it has been ratified by them. The best interest and participatory rights are both part of the CRC which must be attentively implemented by the States in order to ensure that the rights of the children are properly enjoyed by them. Alongside these rights, States are also bound to show their accountability towards progressive realization of economic, social and cultural rights. All of these rights must be exercised in order to ensure that a child is treated

properly within the society as they are believed to be one of the most vulnerable subjects under international law.

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