

The Rights of Australia's Children in a Global Context

By David Mason

By world standards, human rights, including the rights of children, are relatively well respected and protected in Australia. But, on human rights generally and concerning children in particular, there are significant gaps and areas where we need to do better. This emerges clearly from a review of the state of Australia's children such as that presented in this special journal issue. It is also clear that we need to develop structures to perform just this kind of national stocktake on a national basis, and to have the results translated into effective action.

The complexities of international law may seem at first sight to be far removed from the concerns of people and organisations working to see better programs and services for Australia's children. But there is increasing awareness that the international instruments on human rights developed through the United Nations system provide benchmarks against which we can measure our performance, and mechanisms for governments and organisations to work for improvement.

THE CONVENTION ON THE RIGHTS OF THE CHILD

In 1978, on the eve of the International Year of the child, the United Nations decided to embark on the drafting of an International Convention on the Rights of the Child.

The basic purposes of the Convention are to set universally agreed standards for the protection of children that governments agree to observe; and to provide a framework for programs to improve the situation of children.

The drafting process was finally completed in 1988, after ten years of negotiations involving a large number of governments and a wide range of non-government organisations.

The Convention was adopted by the United Nations General Assembly by consensus (that is, with the support of all 158 countries then members of the United Nations) on 20 November 1989, the 30th anniversary of the United Nations

Declaration of the Rights of the Child.

The Declaration is included in the charter of the Human Rights and Equal Opportunity Commission under Federal law. But it has important limitations. The Convention is much more wide-ranging and detailed. As a binding international treaty it also provides for international mechanisms for monitoring how well countries perform in protecting the rights recognised – mechanisms which the Declaration lacks.

For the first time, the reporting process will mean that our governments will be undertaking a regular, systematic national stocktake and review of laws and programs affecting children, in all the areas covered by the Convention.

The Convention deals with a wide range of rights:

- rights to life, survival and development;
- rights concerning identity;
- rights against interference with family life and rights to support services for families;
- rights to freedom of expression, association and information;
- rights to protection from abuse, neglect or exploitation;
- rights concerning health care;
- rights concerning education;
- rights to social security and adequate living standards;
- rights of disabled children;
- rights of refugee children;
- rights of children in substitute care or alternative family care;
- rights of children of minority communities or indigenous peoples;
- and rights in the administration of justice.

One issue which the Convention very deliberately avoids taking any position on is the issue of abortion. This is an issue which it is very difficult to reach any consensus on even within one society – settling the issue by international agreement is simply impossible. The drafters of the Convention agreed that their different positions on this issue, for and against should not prevent

progress on the wide range of other issues which the Convention does deal with.

Despite the range of rights set out, the Convention does not attempt to 'define' the rights of children exhaustively. The Convention contains a provision which states that parties are also bound to accord to children other human rights recognised by or binding on them. In the Australian context, this means that if some other provision in Federal, State, or international law gives better protection to the rights of the child, the Convention states that this other provision is to prevail. All the Convention does is set minimum standards. If we in Australia can achieve higher standards, so much the better.

WHAT WILL ALL THESE RIGHTS MEAN IN PRACTICE?

In our legal system, international treaties do not take effect of their own force: Australian governments have to take legislative and other steps to put them into effect. The measures required are not limited to legislation. This Convention requires a wide range of practical measures. Rather than providing a complete set of solutions or rules to be simply followed, the Convention represents a program for action.

For the Convention to have any effect in Australia, the first step is that it has to be signed, and then ratified, by the Federal Government.

The Convention is now open for signature and ratification by individual countries. Signature is the means by which countries commit themselves in principle to the purposes of the Convention. Ratification is the step by which they accept the obligations contained in the Convention, and bind themselves to put it into effect in their own laws and practices.

The Convention has already been signed by over 80 countries.

Currently the Federal Government is consulting with State and Territory Governments before making a decision on signature and ratification. This consultation is normal practice. In a federal system such as ours it is appropriate, so long as it does not become an excuse for long delays in making decisions. Regrettably, this has been the case concerning some major human rights

David Mason
Research Officer, Human Rights
and Equal Opportunity Commission
P.O. Box 5218 Sydney NSW Fax (02) 229 7611

instruments in the past. The large number of countries who have already signed – including the United Kingdom – makes it embarrassing that Australia has not yet done so, in view of the Governments active involvement on drafting the Convention and publicly stated support for it.

But in all too many cases, the reality for Australian children and their families does not live up to the rhetoric. Too many children fall through the gaps in the protection provided by existing laws and programs.

The Convention on the Rights of the Child provides for the setting up of an independent international Committee on the Rights of the Child. When Australia ratifies the Convention, the Federal Government will have to report to this committee – within two years and then every five years after that – on how Australia is implementing the Convention.

The Committee will report to the United Nations General Assembly on its work generally. It will also be able to seek further information from countries, and make recommendations on issues arising from their reports. There is also provision for studies to be undertaken in specific issues.

The Committee will not be able to order Australia, or any other country, to take any particular action.

But one of the biggest effects of international procedures for implementing human rights treaties is that they can serve to focus public opinion.

For the first time, the reporting process will mean that our governments will be undertaking a regular, systematic national stocktake and review of laws and programs affecting children, in all the areas covered by the Convention.

Individuals and groups working for children's rights in Australia will be able to use this reporting process to highlight problems and to work towards solutions.

The Convention will not implement itself. It requires action within Australia. It is very important to emphasise that it does not impose particular legislative solutions on Australia. In many places the language is very general. But what this means is that it is open to Australian Governments and the Australian community to decide how best to give effect to the principles of the Convention, rather than everything being decided from outside.

The major barrier to Australia signing and then ratifying the Convention appears to be an organised campaign of opposition being conducted by a small number of organisations and individuals.

If these people are to be believed, the Convention will:

- interfere with the rights of parents;
- give children the right to watch pornography;
- give the Federal Government power to take children from their homes;
- make Australia subject to foreign powers.

The claims being made by the opponents of the Convention are wildly inaccurate. By contrast, almost all reputable organisations concerned with children in Australia support the Convention.

One of the claims which has been made over and over again by the organised opposition to this Convention is that, although children in the third world might need better protection, we don't need it here in Australia. Australia's children, according to these claims, are already perfectly well protected by existing laws and programs.

It is true that many of the matters addressed by the Convention express standards which essentially we as a nation have already accepted – in theory at least.

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The Convention, for the first time in an international instrument, sets out in detail that governments must respect the rights and responsibilities of parents concerning their children. This point is very important in answering claims that this Convention somehow presents a threat to the family.

Particular concern has been raised regarding Articles 12, 13, 14, 15 and 16. These Articles recognise the right of children to freedom of expression; freedom of information; freedom of thought, conscience and religion; freedom of association and assembly; and freedom from arbitrary or unlawful interference with privacy.

Contrary to the statements of the opponents of the Convention, these rights are in fact not new. They are already found in existing human rights documents: the Universal Declaration of Human Rights, drawn up in 1948, and the International Covenant on Civil and Political Rights, which Australia ratified in 1980 under the

Fraser Government. These instruments recognise rights which apply to all human beings, including children, as against governments. These existing rights were included in this Convention not to confer 'new' rights but to re-affirm existing ones.

What is new in the Convention on the Rights of the Child in this respect is its explicit recognition that children need direction and guidance, and therefore the increased emphasis it gives to the rights and responsibilities of families, and its requirement that governments must respect those rights and responsibilities. In previous international law these principles have not been so clearly stated.

These rights are included to prevent governments interfering with them. Any claims that the Convention will prevent parents giving direction or proper discipline to their children, or that for example it will force parents to allow their children to watch pornography, are completely without foundation.

In summary, the Convention does not attempt to tell parents how to raise their children. It does tell governments what they ought to do to fulfil their responsibilities towards children and families. The Convention deserves the support of every person working for the benefit of the children of Australia.

David Mason

The UN Development Program reported this year that there are still about 800 million people with insufficient food each day and 1.75 billion without safe drinking water. There are 150 million malnourished children under 5 years of age and 14 million each year who die before their 5th birthday. Ed.

