

# International Perspectives on Practice and Research into Children's Rights

*Edited by Gabriela Martinez Sainz and Sonia Ilie*



CENTRE FOR  
HUMAN RIGHTS STUDIES







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## Foreword

A frequently quoted article in relation to children's rights, particularly with regard to education, is the United Nations Article 26 of the Universal Declaration of Human Rights (1948). This article clearly mandates that "Everybody has the right to education. . . Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities for the maintenance of peace." The reason I quote this frequently cited Article here is to reiterate that while it makes a powerful case for children's right to access education, it also positions the role of education in promoting human rights. This complex but essential complementarity in the nature and role of schooling is the central focus of this book.

The book brings together six contributions, which provide a critical examination of perspectives and practices from different national contexts on the notion of children's rights in educational spaces. The countries covered are diverse, encompassing England, Mexico and India, where the focus is on engagement with topics around access to education- not just at the primary level but also raising important questions around higher education participation; inequality in learning outcomes; violence and corporal punishment in school settings and encouraging children's participation and voice at various levels in the systems.

The discussions in this book take into account the need for not only focusing on individual perspectives and practices

but also examining the social structures that impact on children's rights. It provides a nuanced discussion in relation to the academic debates in the field, but also extends its scope by providing a powerful illustration of how collaboration between academics and practitioners can advance knowledge and impact on practices.

A significant contribution of the book is that it draws on the voices of educators. While there is some reflection on what teachers are unaware of or unable to do, there is greater sensitivity around how educators are working in many challenging contexts in making human rights education feasible, contextual and relevant for their students. An important strength of this book lies in its clear acknowledgment of the fact that while theoretical engagement with the notion of human rights education is essential, the dilemmas and constant challenges that teachers face in making the theory of human rights education better understood among students is equally, if not more, important. It challenges the reader to examine how teaching about human rights education is an iterative process of understanding the learners, their needs and circumstances, while also drawing on the educators' narratives and lived experiences. It highlights a real dilemma in relation to how to teach about human rights in contexts which are fraught with challenges, such as conflict and human rights abuse, and where in many ways, the need for such education is most pressing.

Another important aspect of the book is the focus on making human rights accessible to children and young people. This discussion is not only about making children aware of their rights but also helping them uphold these rights by imparting practical skills. Such deliberations are not simply about passing on the required knowledge and skills about human rights to children but about adopting a more collaborative approach in knowledge building around this topic. There are some fascinating examples in this book around how children can become important stakeholders in this process.

In the various contributions in this book, a strong theme around the situated nature of human rights education emerges clearly. If the goal of schooling is to bring about positive change

in society then there is a need to engage in this constant process of re-examination of existing structures and mechanisms to support the development of meaningful and effective human rights education. Ultimately it is only then can educators engage with students in ways which will enable them to become aware, respectful and protective of their rights and those of others. This book is an important and timely reminder of this duty.

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## Contributors

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## Introduction

This book is the manifestation of the eponymous Thematic Forum supported by the British Association for International and Comparative Education. The aim of the Thematic Forum was to provide a space for the development of critical understandings of children's rights, from different cultural and methodological perspectives. It brought together practitioners and researchers from several national contexts, initially for a seminar hosted in autumn 2016 at the Faculty of Education in the University of Cambridge by the Iados Centre for Human Rights Studies, Mexico and the Research for Equitable Access and Learning Centre at Cambridge.

It was there, in amongst productive conversations with like-minded researchers that the seed for this volume was planted.

In the spirit of the Forum, the contributions in this volume are diverse. Whilst they approach children's rights from different theoretical and methodological perspectives, the chapters in this book are unified by an appreciation of the wider contextual forces at play in shaping both the theories and the practice of children's rights. Chapters 1 and 2 provide the theoretical core of the volume. The former argues for an inductive approach to human rights, weaving in evidence from an American higher education perspective that tackles issues of immigration, the role of the family, and education simultaneously. The latter builds advocacy and practitioner work in London into a critique of theories of children's rights. Both offer highly reflective outlooks on engaging with children, families, and communities in rights-focused work. Chapter 3 illustrates the transfer of the theoretical stances critiqued earlier into practical work,

presenting compelling evidence about a model of meaningful engagement of children in conversations about, and reporting on, their rights. Chapters 4 and 5 present evidence from conflict-affected contexts, be they at the national level, as in Chapter 4, which explores Mexican human rights' educators' teaching approaches, or at the classroom level, as in Chapter 5, which highlights the tensions in teachers' perspectives on corporal punishment in the classroom in the Indian context. Chapter 6 concludes with a macro-level perspective that highlights the role of governments and states, and their resources, in the achievement of all children's rights to education.

Like the Forum from which it has sprouted, this book aims to provide readers with a multifaceted perspective on children's rights research and practice, and to drive forward conversations between these views, to the benefit of children's rights worldwide.

We are grateful to the British Association for International and Comparative Education for their support and to Nidhi Singal for her advice, guidance, and for contributing the foreword to this volume. We offer immense thanks to all the authors of the chapters in the book, whose work is at once challenging and encouraging of children's rights as a field of research and action. The diversity of perspectives encompassed in this volume reflects the extraordinary efforts of practitioners and academics around the world to uphold children's rights, and we hope we have provided a vehicle for their voices.

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## Chapter 1

# Critical understandings of children's rights: an inductive approach

*Alyshia Gálvez*

### Abstract

How can an inductive approach contribute to better services for children and adolescents? In this paper, an inductive approach to advocacy work with immigrant families, inspired by the research methods favored in cultural anthropology, is proposed as an alternative to subtractive approaches. An inductive approach enables a greater degree of collaboration and participation than subtractive approaches that see immigrant families as empty vessels who need to be filled with information and guidance. An inductive approach can yield better results in the design and delivery of services for children and adolescents.

### Introduction

An inductive approach to services for children and adolescents can contribute to more egalitarian dynamics and a feeling of ownership and empowerment for those served. It also offers a feasible means for educational and health services to serve diverse communities even where it is impractical for staff members to become fluent in the languages, cultures and historical contexts of each of the groups served.

When we consider children's rights, we must consider both juridical access to rights as well as substantive rights (Howe and Covell, 2005), including whether or not children and their families feel like they are fully included members in collectivities who not only have rights but can exercise them with as much agency as anyone else. In the contexts discussed in this chapter, immigrant families seeking health and education services do not often experience overt discrimination or denial of access, but rather are treated as less than fully empowered and worthy in health and education settings. Austerity discourses, as well as unexamined biases about the abilities of immigrant families to serve as reliable experts in their own lives, constrain the possibilities they have for being fully empowered partners in achieving their health and education goals. This chapter proposes an inductive approach as a fruitful solution to some of the issues that arise in health and education contexts and as an antidote to "subtractive" approaches. I explore the benefits of an inductive approach by exploring my research in a public prenatal clinic, as well as serving as an advocate for immigrant students in my university.

## **Background**

Research on the educational attainment of immigrant students and their families in the US public school system has found that, too often, students and their families are assumed to lack the skills, know-how, support, and social capital to succeed in the education system. A deficit-based approach sees students as empty vessels to be "filled" by the school system.

In a seminal study examining the experiences of students in a southern Texas high school with 98% Mexican and Mexican-American adolescents, Valenzuela (1999) found that students who had immigrated from Mexico to the United States at an older stage of childhood were more likely to be academically successful than their US-born and raised peers. She theorized that a process she called "subtractive schooling" worked over time to strip away the protective benefits and self-confidence that students brought to the educational environment.

Mexican-American students did not always share their immigrant classmates' enthusiasm for school or their willingness to defy the low expectations of their teachers and counselors. Recently arrived immigrant students could count on recent academic achievement in their communities of origin in Mexico as proof of their ability to succeed, offering a protective cloak and immunity to the negative opinions of adults in the school, even while they needed to transfer their knowledge to English in order to succeed academically.

Subtractive approaches to schooling rely on deficit discourses and an assumption of minority dysfunction (Magaña and Clark, 1995) to imagine lower potential and aspirations among racialized minority students. This means that specific characteristics or features of a student or their family's profile are thought to predict their performance in the academic setting. It assumes that poor, minority, and/or immigrant families by definition are less likely to succeed than other students. Students' home environment, socio-economic or immigration status, language, race or ethnicity are viewed negatively and are assumed to correlate to their potential. Even though most educators and the school systems in which they work profess to serve the whole child and to strive for every child's success, and some engage in deliberate efforts to minimize bias, risk factors deduced from information unrelated to academic performance, per se, often still anticipate a student's expected trajectory in subtle ways. Students perceive this and often their own sense of potential can be inhibited by the expectations they perceive adults have for them.

Students who have not experienced the school system since early childhood (such as recently arrived immigrants) may retain a more favorable sense of their potential in spite of negative expectations from educators. Even though more recently arrived students may require greater support in acquiring linguistic and navigational capital to "do school" competently in the United States (Yosso, 2005), they may be boosted by an untarnished sense of their own capacity for school, and are less inured to negative expectations.

A subtractive approach assumes that students and their families have negative habits or orientations that must be corrected. It also posits that they have to be told what they need and that they do not possess the necessary skills or knowledge for educational success. As a result, it is thought they must be given those skills and knowledge as part of the educational encounter. Because educators in schools in resource-challenged communities already face many demands, they may doubt their own ability to deliver these skills and knowledge, which can be viewed as a burden on top of expectations that they deliver the curriculum. But, because there is already an assumption that the children and families served in those environments are deficient, imparting even partial or poor-quality skills, knowledge or services is often presumed to be acceptable, because it fills a vacuum or void. Partial services are sometimes even couched as “heroic,” because they are seen to lie above and beyond the everyday role of educators to deliver content.

## **Subtractive schooling, parallel to subtractive healthcare?**

The process of subtraction in the educational environment relates to the concept in epidemiology of “weathering” (Geronimus, 1992; Geronimus, et.al., 2006), in which experiences of discrimination, stress and poverty slowly wear on the body, leading over time to poor health outcomes. This has been correlated to health outcomes, with the favorable health outcomes of recent immigrants in spite of socio-economic disadvantage, sometimes referred to as the “immigrant paradox,” an advantage that is seen to decline over time with greater duration of residence in the US (Gálvez, 2011; Magaña and Clark, 1995; Palloni and Morenoff, 2001; Palloni, 2000).

In a research study on the experiences of Mexican immigrant women in the prenatal clinic and labor and delivery wards of a New York City public hospital, I found that women who had migrated recently and who had given birth prior to migrating were more able than women who had resided longer in the US to resist classification as “high risk” patients,

which would typically lead to highly invasive treatment and interventions (Gálvez, 2011). They had greater confidence in their capacity to bring a pregnancy successfully to term and deliver their infants without aggressive interventions. They also brought with them information and strategies gathered from their own and family members' birth experiences—often with lay midwives at home—that enabled them to deal with pregnancy-related aches and pains, and the pain of labor, without resorting to pharmaceutical and other remedies. Applying Valenzuela's theory, I developed a concept I called subtractive healthcare to encompass the process by which I saw repetitive and long-term interactions with the health care system stripping away the confidence and knowledge that recently-arrived immigrant women brought to the health care encounter, leading to greater dependence on medical professionals and their advice, which was often partial, rushed, and premised on budget considerations.

Like subtractive schooling, subtractive health care in the prenatal clinic is characterized by deficit discourses and an assumption of minority dysfunction (Magaña and Clark, 1995). It is also deductive in that specific “risk factors” such as whether a patient or her partner has health insurance, is an immigrant, is married, is low-income, or has low levels of educational attainment, determine how a patient is channeled into services and whether she is classified as being at risk for pregnancy-related complications. Patients classified as being at high risk, indigent, or noncompliant receive additional interventions and more surveillance than patients who have private insurance or demonstrate linguistic, educational, social capital that leads to their categorization as knowing how and being capable of caring for themselves. So, for example, women who receive publicly-funded prenatal care are counseled about contraception, including sterilization, at multiple intervals throughout their pregnancies; undergo rigorous social work and nutrition evaluations; are asked intrusive questions about their living arrangements, relationships, and sexuality; among other intrusions not experienced to the same degree by women with private insurance or who are thought not to be high risk (See Bridges, 2017).

Because the setting in which this occurs is a publicly funded hospital ever at risk of diminished budgets, decisions are austerity-oriented. A perceived or actual constant state of budget crisis means that all hospital personnel are encouraged to conserve resources and look for savings in the routine delivery of care. I observed some services and treatments being modified or withheld from some patients deemed not deserving because of their presumed ability to understand or benefit from services, or because the costs of those services were thought to be too high to “waste” on “noncompliant” patients. For example, I was told by a nurse that intrauterine devices, or IUDs, a costlier type of contraception than hormonal patches, were not given to patients viewed as “troublesome,” because it was thought they would request removal right away and the device’s high cost would be wasted.

Subtractive approaches posit that material resources, human capital and time are all non-renewable resources and the first role of public institutions is to use them sparingly.

## **Alternative approaches?**

Critical race theorists in the field of education argue that students and their families bring to the educational encounter many different kinds of capital, including aspirational, navigational, social, linguistic, familial and resistant capital (Yosso, 2005). The idea that students and their families do not lack but are instead rich with knowledge and resources that favor their academic achievement (even when these take forms not formally recognized by educational systems), is an inversion of the deficit-based approach. By acknowledging students’ wealth, Yosso argues that school systems will better support students’ acquisition of the behaviors, attitudes or knowledge sets that may be less familiar but are often necessary in mainstream US educational settings.

Related to this, Yosso’s discussion of the many kinds of capital families contribute to educational environments is the idea of funds of knowledge (González, Moll and Amanti, 2006), which posits that knowledge is a process of social construction,



in which participants draw on experiences in other contexts and bring that learning to any new encounter. In other words, as Cummins wrote: “no learner is a blank slate” (1996, p.75). Educators who emphasize the relational process of learning insist that people learn best when they are supported as complex and whole human beings, not as empty vessels.

Others propose that cultural competency or cultural sensitivity can correct subtractive approaches. If service providers, including educators, are educated about the specific contexts and histories, for example, of immigrant students’ communities of origin and of arrival, are linguistically competent, and make an effort to communicate their tolerance or acceptance of the student or patient’s cultural difference, then bias and subtractive services will be reduced. However, such approaches often fall short. Sometimes this is because they are seen as add-ons, not crucial to the mission of service delivery but a “fringe” benefit to culturally sensitive service delivery. Also, tokenism, a minimal or insincere nod to cultural diversity without respect or humility, can be even more insulting than a complete lack of cultural sensitivity (Santiago Irizarry, 1996). In communities where a specific group is numerically predominant, such as South Texas, where cultural diversity is largely comprised of US- or Mexico-origin Mexican and Mexican-American populations, it can be expected that educators and other service providers should know something about that community, and preferably be bilingual and versed in the cultural specificities of the population they serve. But in places like the public prenatal clinic in a New York City hospital where I conducted research, however, dozens, if not hundreds of linguistic and national origin groups are served and even within major immigrant groups (such as Chinese, Mexican or Jamaican), there is tremendous diversity in terms of duration of residence in the US, languages spoken, patterns of migration and settlement, and more. It is not reasonable to expect that service providers will become versed in specific characteristics of many distinct populations that are constantly changing. The impossibility of such familiarity with numerous populations can lead toward inertia, in which service providers overwhelmed by diversity opt to do nothing.

## Inductive approach

I would like to propose that an inductive approach, drawn from the methodologies of ethnographic research, can prevent some of the ways that services for immigrant families become subtractive. Ethnographic research, the primary approach of cultural anthropology and increasingly used in other disciplines, involves participant observation and semi-structured interviews, among other techniques for gathering data. Anthropologists generally hold that rigid, formal interviews and surveys conducted outside of a relationship of “rapport” and trust with research subjects are less revealing, less useful, and more ethically compromised than the slower, but richer approach of building rapport and allowing research participants to articulate the organizing themes and topics discussed. Anthropologists strive to design and implement opportunities for unstructured observation and dialogue, as well as open-ended questions that do not curtail the breadth of available responses or anticipate or imply acceptable, normative, or desirable frames for organizing information. Typically, cultural anthropologists bristle at expectations by funders and common to interdisciplinary research settings for them to produce a hypothesis or to anticipate specific themes that might be expected to structure an inquiry. Instead, anthropologists utilize an inductive approach.

The inverse of deduction, an inductive approach, also called a “bottom up” approach follows this pattern:

*Observation → pattern → tentative hypothesis → theory*

—Open ABM, 2017.

Inductive reasoning requires an inquiry-based approach. Rather than testing and proving or disproving a hypothesis, the hypothesis is developed only after open-ended observation leads a researcher to note patterns. Theories are tentatively developed at the end of the process and are always subject to revision with continued observation.

I propose that an inquiry-based, inductive approach to service delivery provides a potential solution to subtractive approaches. When advocates, educators, health care professionals and others are working to provide services, I propose a radical approach: ask those being served. Rather than categorize people into pre-conceived groupings according to risk factors, ethnicity, language, education level, insurance or immigration status, income, etc., an inductive approach allows the person or family served to articulate their own needs and what they desire to receive from the institution in question. In this approach, people are understood to be experts in their own lives and of their own embodied experiences. They are viewed as having knowledge and resources which may not be readily visible that will provide support in their pursuit of their goals—whether those goals are educational attainment, health, or something else. Services are not “delivered” blindly or automatically, but are instead adapted to the specific situation of the individual and her family.

This does not mean that everything has to be infinitely customized to individuals, but rather there is an expectation that there will be a dialogue about what the service provider and the recipient seek to achieve. This can actually be fiscally sound, too, because it is more expensive to “fill an empty vessel,” than it is to top off with specific and mutually valued information, services or skills the already plentiful resources that a student or patient brings to the classroom or the clinic.

*Inductive, inquiry-based approaches offer particular benefits. Inductive approaches are horizontal, responsive to emerging needs, and also eligible for constant adaptation.*<sup>1</sup>

They require no additional resources. While it takes longer to have a conversation with a person rather than to blindly prescribe services to them, this investment of time at the beginning of an interaction saves other resources later, including time. By developing a dialogue between the service provider and recipient, there is a common cause and purpose that is developed in which they partner to achieve mutually agreed

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<sup>1</sup> I appreciate the suggestion of this phrasing by one of the anonymous reviewers of this chapter.

upon goals. This removes the expectation that only the service provider will be accountable for the delivery of services, and lessens like likelihood that a recipient will be seen as uncooperative, unmotivated or noncompliant—adjectives used too often for immigrant students and patients, and their families. An inquiry-based approach empowers those at greatest risk of disempowerment in traditional systems of service delivery. While in the educational and healthcare systems, those with the greatest socio-economic advantage are often expected to be capable and vocal advocates for their own and their children's well-being, those of limited economic means, who are immigrants, or who receive publicly provided services are more often expected to demonstrate an untenable combination of eligibility for services or need, capability to care for themselves with docility, and compliance with the instructions given by service providers (Bridges, 2017 and 2010). Assuming that every person is capable of interpreting what is best for themselves and their children and placing service providers in the role of collaborators or partners in achieving those goals are approaches that are more likely to lead to successful outcomes than assuming from the start that someone is not capable of articulating or achieving their goals.

This is especially powerful for children and adolescents in developing feelings of ownership in their own lives, and it heightens engagement and accountability. Power dynamics and inequalities within communities and families also have to be taken into consideration. If a parent is asked to identify her goal or objective for her child, this may conflict with what the child herself will articulate. A spouse could speak for his or her partner without consent or consultation. An inquiry-based approach that does not acknowledge that people may be dominated or silenced within their families and not only by outside institutions could replicate or reinforce dynamics of violence or abuse. An inductive approach will not resolve all of these complexities. However, it provides a path toward greater autonomy and acknowledgement of the funds of knowledge of immigrants and their families.

## An example

At the Jaime Lucero Mexican Studies Institute at the City University of New York (CUNY), we strive to deploy an inductive approach in our work with students and organizations. I will describe two examples of this, the Seminar Series that is a part of our scholarship program for CUNY students, as well as our work with the Anchoring Achievement in Mexican Communities initiative sponsored by the Deutsche Bank Americas Foundation from 2013 to 2017. As founding director of the Institute from the proposal phase in 2011, to Dec. 2016, I was involved in the design and implementation of these activities.

From the founding of the Institute until the present, we have administered a scholarship program, now called CUNY Becas. Between 2012 and 2016, the program administered 100 full tuition scholarships to CUNY undergraduate and graduate students who were selected based on three criteria: academic achievement, financial need and commitment to service in the Mexican community. When the scholarship program began, the Institute was small, lacking any full-time staff members, and the scholarship program was minimal, consisting mainly of tuition funding alone. For the second year, we added a seminar series to the scholarship program, in the interest of building a cohort sentiment among the scholarship recipients, whom we call Becari@s. For two years, staff members curated the seminar series, deciding on topics and guest speakers.

In the 2016 scholarship year, we decided it would be more powerful for the Becari@s themselves to decide what they hoped to get out of the seminar series and to take ownership of it. With staff serving not as conveners but as administrative support, the Becari@s decided on topics, guest speakers, and agenda. Working together in collaborations they built based sometimes on proximity: those who studied at the same CUNY campus sometimes coordinated a seminar together, or mutual interests: those already studying in graduate school and those considering graduate study in the near future planned a seminar on applying for and financing graduate study. Since the students began taking the lead, we saw higher levels of par-

ticipation in the seminar series, and more enthusiasm for the content. The Becari@s began to look more often at each other as “experts,” capable of counseling those following in their footsteps about the pros and cons of pursuing a master’s degree, for example. When they invite an external speaker, it is because it is someone they respect and wish to learn from, and they share with one another the role or expertise that person brings to the conversation. With this, we immediately saw a higher degree of participation, and with time, we anticipate we may even see higher levels of academic achievement as a result of this model. New research is indicating that the cohort format of the Becari@s network is leading to greater confidence and resilience among the students and graduates of the program (Higuera López, 2017).

The second program I will discuss is the Institute’s work with the Anchoring Achievement in Mexican Communities initiative sponsored by the Deutsche Bank Americas Foundation. The Institute was engaged to provide professional development for the Neighborhood Networks, clusters of 3-5 nonprofit organizations or schools in each of the five boroughs of New York City, working to improve educational attainment in the Mexican community. The institute’s role in the work was to coordinate 3 years of symposia, seminars and workshops. At first, we delivered seminars comprised of presentations of the “expert” knowledge of scholars who teach and research at CUNY. In time, however, we realized that we would better serve the aims of the initiative by having a conversation with the organizations about the issues they were facing in their communities and populations they serve. Collaboratively, we developed questions that emerged from the work and interaction with families in each of the communities. As a result, we developed seminars micro-adapted to the concerns of interest to the organizations and their constituencies. Again, institute staff served as support for the driving questions that were at the heart of the work of our partners, rather than imposing on them what we thought might be useful. It was a fine balance to convince them that having longer planning meetings and check-ins with them would provide better-adapted seminars for their staff,

and sometimes for those they served. Always strapped for time and short on personnel, it was sometimes hard for them to stop what they were doing to discuss with the program coordinator their concerns and needs. Not every one of the neighborhood networks was open to this work. Those that were willing to engage in this conversation, however, benefited deeply in that they were able to receive services that responded to their actual needs in a sensitive and dynamic fashion. The Institute could not rest purely on the academic “expertise” readily available among the CUNY faculty, but looked further afield, sometimes inviting guest speakers from other states and countries to present at the seminars and engage in conversations with the networks. We also spent time discussing with guest speakers why we hoped they went away learning as much as the seminar attendees. Some guest speakers thought they could give a talk and depart, but we insisted it was important for every seminar to have a horizontal format in which all of the participants shared as much as they received from presentations by others. We feel that this format enabled the seminars to be powerful tools and support for the work of the initiative.

## **Conclusions**

In conclusion, this chapter has argued for an inductive approach to services for families and children in educational, health care, and other settings. An inductive approach premised on a horizontal exchange of ideas can provide a partial antidote to the top-down and subtractive methods too often used in service settings. While it can be difficult for service providers to have specific cultural competence in all of the populations they serve, an inquiry-based approach in which people are asked what they expect to gain from engaging with the institution and what they bring to the encounter, with an assumption that all people bring a wealth of prior experience and knowledge to every encounter can be powerful. It can empower those served to feel ownership and shared responsibility for the outcomes because they have been a part of defining the desired outcomes and recruited meaningfully to work toward them.

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## Chapter 2

# 'Are we really doomed?'

## Critical pathways for advancing children's rights through theory and practice

*Francesca Zanatta*

### Abstract

This chapter presents the argument that two factors are particularly obstructive to the flourishing of a more unified and integrated modus operandi for both practitioners and researchers working in the field of children's rights. First and foremost, I will argue that the limited synchrony in the historical development of theory and practice, with regards to children's rights, has impacted upon and limited the opportunities for a meaningful collaboration between practitioners, activists and academics (Leonard, 2016). I will then discuss how the interpretation of children's rights as a tool to ensure protection, rather than to promote autonomy (Woodhead, 1994), weakens the rights-based approach and deprives the concept of *right* of its essence (Biggeri and Karkara, 2014). In my conclusions, I will argue that the lack of critical revision of theories of childhood is the overarching issue to the advancement of children's rights.

### Introduction

*'All knowledge is a condensed node in an agonistic power field'*

*(Haraway, 1988: 576)*

The development of a theory-practice nexus is an important, yet complex, task that can promote overall advancements in a discipline (Ennew, 2011). Whilst in some fields the choice for research to either be ‘beautiful’ or ‘useful’ is a possibility (Tran, 2012); in the context of children’s studies the *production* of knowledge is increasingly expected to be directly linked to promoting improvements in working with children (Carnine, 1997). Nonetheless, a number of difficulties contribute to limiting the development of a solidly integrated research-practice approach, particularly when concerning children’s rights (Ennew, 2011). In this chapter I suggest that, amongst these obstacles, two factors are particularly obstructive to the flourishing of a more unified and integrated *modus operandi* for both practitioners and researchers. First and foremost, I will argue that the limited synchrony in the historical development of theory and practice, with regards to children’s rights, impacts on the possibility of a meaningful collaboration between practitioners, activists and academics (Leonard, 2016). I will then discuss how the differentiation between children’s rights as a tool to ensure protection or to promote autonomy (Woodhead, 1994), weakens the rights-based approach and deprives the concept of *right* of its essence (Biggeri and Karkara, 2014).

In presenting these concerns on the potential impact of delaying the incorporation of a children’s rights approach to all aspects of practice and theorisation of relevance to children’s lives, I identify the lack of critical revision of theories of childhood formulated outside a children’s rights-based framework as the overarching issue in the advancement of children’s rights.

## **An ethical dilemma on the co-construction of knowledge**

Before proceeding with the exploration of my arguments, I shall share an ethical dilemma I encountered whilst writing this piece. The reflections presented in this chapter derive from a critical review of the juxtaposition of my experiences in my roles of researcher and children’s practitioner over the years. However, the moments that I identify as sources of the thinking

here discussed stem from two specific conversations in which young people shared unsolicited comments, in a non-research circumstance<sup>2</sup>.

Previous experience and reading provided me with an awareness of the numerous ethical dilemmas a researcher encounters during fieldwork, regardless of the type of participants involved. Nevertheless, confronted with the question as to whether I could base my writing on knowledge received from young people, without being in a position to fully acknowledge them, I felt unprepared and unsure. My studies, in psychology and anthropology, introduced me to diverse approaches and philosophies in terms of conducting research and considering the validity of data. As with many other psychology undergraduates, whilst learning about child development, I became familiar with and accustomed to the historically diffuse practice for psychologists in the past to rely on their own children as a source of inspiration, reflection and, ultimately, data. No permission asked, no acknowledgements required. In my psychoanalytical studies, despite the questionable boundaries in terms of confidentiality (Harcourt, 2013), I encountered the Infant Observation Method (Bick, 1964). For two years, I relentlessly and punctually observed, one hour per week, every week, a baby in his home environment. The method, developed with the intention of providing students with direct experience of an infant's presence, became a training tool for practitioners, an opportunity to reflect on and discuss the world of the baby (Rustin, 2009). Whilst the experience of infant observation is indeed unique, it surely occupies an interesting place in the debate regarding children as objects vs subjects of study (Woodhead and Faulkner, 2008). Again, no permission asked, no acknowledgement required.

The meticulous and interpreted observation of others' behaviour is also widely present in the field of Anthropology. Ethnography consists of an extended period of participant observations, accompanied by discussions, dialogues and everyday life actions. In contrast to psychology, the accounts

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<sup>2</sup>In the first instance, I was attending training, part of which was to be delivered by young people and in the second instance the conversation happened during a participation event.

collected would historically aim to develop an understanding of otherness and researchers would be encouraged to interpret the data by translating participants' views into 'understandable' accounts. Predictably, the pursuit of diversity soon became an object of mockery and rejection in violating the participants' rights, as exemplified by the famous hoax study on the Nacirema (Miner, 1956).<sup>3</sup> Nevertheless, a sense of *otherness* has continued to characterise a large section of anthropological children-focused research (Montgomery, 2008), which would frequently feature limited engaged participation, primarily in the context of family/institutions and a tendency to equate children to primitive examples of civilisation. Once again, no permission asked, no acknowledgement required.

Although my studies failed to provide much preparation for including children in research in a meaningful and consensual manner, over the past ten years, these research scenarios have undergone a significant improvement. However, whilst in principle obtaining children's assent, if not consent, has become a central topic of discussion in the context of ethics (Alderson and Morrow, 2004), securing it is not always an easy point of negotiation for researchers (see for example accounts of McNamee, 1998 cited in McNamee 2016), with the gate-keeping system undermining the role of children as participants (Balén et al., 2006).<sup>4</sup> Similarly, ensuring the participant's right to withdrawal (Farrell, 2005) and the confidentiality of the data collection process (Duncan et al., 2009) still constitute an issue which is at times hard to overcome. The ethical dilemma I confronted for this piece of writing is, however, of a different nature. Whilst all the ethical considerations discussed thus far ensure the safeguarding of children as subjects of research, they also circumscribe the role offered to children as *informants*, providers of

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<sup>3</sup> A famous paper, usually introduced to students over the first few weeks of studies, presenting an ethnographic study focusing on the obsessive hygiene regimes observed in the Nacirema, a made-up tribe populated, nevertheless, by North Americans.

<sup>4</sup> McNamee, S. (1998) Questioning video game use: An exploration of the spatial and gender aspects of children's leisure. (unpublished doctoral dissertation), Hull: University of Hull.

views, perspectives and opinions, rather than contributors of knowledge (Mayall, 2008). In the two moments that sparked the thinking presented in this chapter, children had a very different role. Firstly, as mentioned before, the context was not of research but instead a participation event led by young people who had been involved in the development and delivery of a series of events based on the principles of Total Respect (CROA, 2000). It is important to note that one of the key principles of this training package is for children and young people to be present as co-constructors of knowledge, with the consequence of subverting elements of the power-relations usually in place and the opportunity for empowerment and development of self-confidence (Rixon, 2014). Perhaps it was because of the context that it felt incredibly important to acknowledge that the moments of sharing constituted construction of knowledge. The dilemma I face is therefore how to secure recognition of the young people's contribution as co-constructors of knowledge. Had it been any other colleague, a commonly recognised solution for this situation would have been co-authoring this paper or naming the person in the acknowledgements for their contribution. Safeguarding, confidentiality, access to gatekeepers and similar considerations invalidated this possibility. Additionally, I believe that the requirements of academia would have risked the repositioning of children back to a role of informants, whose participation would have directly depended on ethical permission and the review of a series of gatekeepers (Bain and Payne, 2016). Moreover, scepticism around the idea of children as co-producers of knowledge represents yet another tangible barrier to the development of epistemological frameworks consistent to the concepts of agency and meaningful participation of children (Bain and Payne, 2016).

In this instance, I do not claim this paper represents a successful example of co-production of knowledge, *au contraire*. However, I do wish to emphasise that the conversations that inspired the reflections presented in this chapter were initiated and formulated by the young people.<sup>5</sup>

Whilst in the past, methodological research placed its efforts in identifying the roles of adults in conducting research

with children (Fine and Sandstrom, 1988), future endeavors in this discipline ought to continue to focus on the consolidation of meaningful and active roles for children and young people (Shier, 2001). This long preamble, exploring my own ethical dilemmas, introduces perfectly the very essence of the hereby discussed obstacles practitioners and researchers encounter on a daily basis when working with children and young people. How can we promote meaningful advancements in children's rights when theory and practice are unaligned?

How can we promote meaningful advancements in children's rights without fear of endangering their protection?

## **When theory and practice are simply “out of sync”**

The first moment of reflection took place after a training introducing participants to the concept of children in care. A section of the training presented a piece of research on the negative impacts of being in care on brain development. After the training, in a very sarcastic manner, one of the young people shared with the group their disappointment at hearing that their brain would have not been able to overcome having been in care as a child.<sup>6</sup> The conversation continued briefly in a semi-jokingly manner, with one attendee dramatically announcing ‘*so, we are all doomed*’.<sup>7</sup> Interestingly, the critique moved by the young people was not focusing on the actual content of the research shared, which would have been my main concern, but more importantly on its implications in terms of their lives. Ultimately, the frustration and disappointment shared questioned the meaning, for practitioners, of delivering sessions and providing support whilst believing that the possibilities

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<sup>5</sup> The discussions are here presented under full consent of the young people and after a shared agreement on the intended message the article should bare.

<sup>6</sup> All of the young people in this group had been in care at some point in their life.

<sup>7</sup> The word of choice was actually different, alas not appropriate for publication.



for a meaningful recovery, or change, were slim. This dissonance and discrepancy highlighted by the young people, is one that researchers and practitioners frequently face in their work with children.

As suggested by Burman (2008, p.20), it is very likely that even the utmost children's rights advocate started off as '*paid up subscriber to the modernist developmental fallacy*'. In training for professions that include, or consist of, direct work with children, it is still very unlikely to be engaged in a detailed and up to date exploration of children's rights (Mitchell, 2000, Jerome et al, 2015, Robson, 2016). Whilst it is clear that the lack of children's rights in the curricula, delivered to future practitioners, constitutes a major issue in ensuring quality in the delivery of services (Jerome et al, 2015, Mitchell, 2005), exploring the historical development of children's rights as discipline provides some level of clarification as to the causes of this mismatch.

In Western Society, children's rights were formally recognised through the drafting of the United Nations Convention of the Rights of the Child (UNCRC) (Cantwell, 1994), whereas social research started incorporating a rights-based conceptualisation of childhood at a later date (Montgomery, 2009, Ennew, 2011). Whilst the initial discussions around the development of the UNCRC are traced back to the early 1920s (Cantwell, 1992),<sup>8</sup> influential papers proposing a rights-based approach to the understanding of childhood and children were published approximately seventy years later (Leonard, 2016).<sup>9</sup>

With an innovative focus on children's participation and agency, this new paradigm not only introduced a shift in the way children are understood and theorised, but also provided critical lenses for a different approach to reading and interpreting the convention (McNamee, 2016, Freeman, 2011).<sup>10</sup> The intentions and the aims that inspired the UNCRC remain widely respected and are mostly recognised as funding pillars for the advancement of children's rights (McNamee, 2016,

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<sup>8</sup>1924 Geneva Declaration of the Rights of the Child.

<sup>9</sup> See: Prout and James, 1997, Qvortrup, 1994 and Thorne, 1994.

<sup>10</sup> Usually referred to as New Sociology of Childhood.

Robson, 2016). However, the complexity of the document has also been recognised, and a number of theorists recommend that the convention should be understood in its many functions: as a point of reference and protection for children's rights (Davey and Lundy, 2011), as much as a reminder of the temporality and contextual validity of concepts and relative practices (Quennerstedt, 2013, Cannella, 2000).

The controversial and divergent views on the Convention (Ennew, 2011), identified as the beating heart of children's rights (Smith, 2015), have nevertheless highlighted an inherent level of tension and discordance between theory and practice in children's rights (Mason and Fattore, 2005, Todd, 2012). Whereas the practice based development of the UNCRC emerged first, research seems to have advanced at a faster pace with the recognition of children not solely as beings, but also active agents (McNamee, 2016). As indicated by Cannella (2000) and Tzuo et al. (2011) the issue is not confined to the lack of children's rights knowledge, one of the main obstacles to a unified advancement of children's rights is the continuous adoption of theoretical frameworks that limit children to a right-less, no-agency status. The limitations of theories informing approaches such as the Developmental Appropriate Practice have been explored and highlighted for over two decades (Kagan, 1998, Burman, 1994). Later studies have reiterated the emphasis not only of the shortfalls, but also of the dangers of theories professing normativity of development (Graue, 2005, McNaughton, 2001). Nevertheless, advancement in the translation of these theoretical critiques into practice is very limited and obstructed by policies (Tzuo et al., 2011). In their training, practitioners are taught about the normal stages of child development, children are presented as innocent and naïve 'becomings' (rather than beings) and the concept of child agency, if present at all, is mainly related to a limited capacity for participation in decision making.

I directly witnessed these discrepancies between what is taught and accepted as common knowledge and the latest advancements in research whilst completing my doctoral dissertation, a cross-cultural critique of attachment theory (Zanatta, 2017). Over the years, when introducing colleagues

to the subject of my study, I received a number of different reactions, ranging mainly somewhere between surprise and interest. It was only last year that, whilst preparing to present the findings of my dissertation at a conference, a colleague (trained psychiatrist and anthropologist) asked whether I feared the reaction I might receive from the audience, in light of the fact they were possibly all 'securely attached' to Bowlby's theory. Whilst I had prepared myself for a Klein-Schmideberg animosity (Segal, 1964), the paper was welcomed positively, in a similar fashion to Timimi's (2002) experience in questioning the validity of ADHD at conferences (as opposed to papers).<sup>11</sup> At first, I wondered whether this was due to the recent publication of two ground-breaking edited collections offering a critical revision of attachment (Hrdy, 2009, Otto and Keller, 2014), however not many colleagues were familiar with these. The experience forced me to further explore the possible reasons behind this dissonance between the apparent interest in assuming a critical approach and the reluctance to commit to a transposition of these into practice. Burman's theory (1997) linking the marketization of psychology as good to the lack of translation of critical theory into critical practice initially satisfied my questioning on this matter. However, few months after having presented an initial version of this paper at a BAICE forum, I had the opportunity to visit the museum of Criminal Anthropology in Turin, Italy.

The permanent exhibition consists of the collection developed by Cesare Lombroso, whilst working on his studies on phrenology. After a room populated primarily by skulls and bones, the visitor gains access to Lombroso's private collection of artefacts from asylums, detention centres and prisons. It is soon revealed that contrarily to what a postmodern researcher might expect, these materials were not used to contextualise the story of the patient, but in fact to corroborate the thesis developed through the data collected through a craniometry and other body measurements. In his studies on phrenology, Lombroso correlated delinquency with avatism, a return to

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<sup>11</sup> Schmideberg publicly criticized her mother's methods during the British Psychoanalytical Society meeting in the '30s.

a primitive state, itself linked to the idea of a delayed or disrupted development of the person. Lombroso's determinism sounded incredibly similar to the deterministic statement that had upset the young people after the training. The presence of determinism dominates mental health sciences and finds its strength in the *seduction* (Kagal, 1998) of hard evidence. In his chapter arguing the scientific unfoundedness of attachment theory, LeVine (2014) emphasises the importance of avoiding wild generalisations and considering the context to avoid getting stuck in 'cultural ideologies'.<sup>12</sup>

The issue, alongside the commodification of psychology (Burman, 1998), is therefore the dogmatic embrace of certain perspectives and theories, deriving from the source of evidence in vogue at the moment (see Whitley, 2008). Whilst Lombroso studied deviation through body measurements, Freud identified psychopathologies through the exploration of the mind (Eisenberg, 1986) and nowadays neuropsychologists proclaim the possibility of diagnosing autism through a brain scan on babies aged 0-24 months (Hazlet et al., 2017). Whilst the tools and the sources of evidence might have changed over the years, the implementation of these in identifying un-desirability and otherness seems to have persisted (Fanon, 1967). As admonished by Timimi (2002) the risk for western psychology is to incur in the correlation '*if you own the rights to define common sense then common sense will be twisted to your purpose*'. The issue of purpose is raised also by Burman (2008, p.30) who reminds theorists and thinkers of the importance of reflecting on their own 'placing' in relation not only to the matter they are theorizing about, but also in society at large. LeVine (2014) completed an exercise of reflection on placing-the-theorist on behalf of Bowlby in relation to attachment theory.

A partially similar exercise had in fact been completed previously, by representatives of the feminist movement, in discussing the limitations imposed on women via their election as the one and only responsible caregiver for their children (Firestone, 1970). Elsewhere (Zanatta, 2017) I argue in

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<sup>11</sup> Like monkeys, like babies.

more depth the correlation between the liberation of mothers from the constraints of attachment theory and the lack of liberation of children. For the purpose of this discussion, the one key factor I wish to introduce is what I suggest is the main reason for the failed liberation of children from attachment theory: protection.

## **‘We don’t need no protection, we don’t need no thought control’<sup>13</sup>**

As a children’s rights advocate, it is incredibly complex to oppose child violence and abuse, whilst simultaneously arguing for the dismissal of theories that in a mainstream discourse are idolatrized as defenders of children’s lives (Archard, 1993). From experience, for example, the suggestion of dismissing attachment theory in its current form is frequently opposed by raising concerns in relation to the need to identify alternative person(s) with caring responsibilities. Ultimately, it is undeniable that child development theories have indeed contributed to reducing harm against children (Timimi, 2002). This statement should however elicit a number of collateral reflections: which type of harm has been reduced? Has any other harm been caused? Is this the best pathway to legitimise and advance children’s rights?

The second moment of knowledge took place during a participation event aimed at identifying topics that the young people wished to explore in a forum. The two most requested topics were LGBT experiences and how to handle stop & search situations. Whilst discussing the second point, a member of the group shared a piece of news on youth transport services in the USA, companies that can be hired by parents to relocate challenging children usually into a setting delivering wilderness therapy. After we looked into the topic, members of the group shared mixed reactions of fear and anger, as I could sense a shared struggle to discuss a new way for adults to dispose of children at their wish. The focus of the

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<sup>13</sup> Inspired by Pink Floyd ‘Another Brick in The Wall’ lyrics.

conversation was specifically the fact that a key feature of the service is the collection of children against their will, usually whilst the passenger is asleep or catching them by surprise. As described by a collaborator, this was nothing more than a modern and professionalized version of the boogeyman.<sup>14</sup>

Whilst the young people proceeded to de-dramatise the moment by creating possible sales lines for the modern boogeyman, I remembered another conversation held with a friend, a trained child psychologist, on the very same topic. This person had introduced me to the concept of the youth transport service, but rather than describing it as a mythical creature renowned for terrifying children, he had told me about a helpful programme supporting families, struggling with the extreme violence and anti-social behavior of children, in transitioning their children into a holistic therapeutic model that required delivery in close contact with nature, with the aim of providing the young people with the time and the tools to rebuild their social skills and confidence. Quite a different story. Later that day, after the discussion with the young people, I contacted the psychologist friend and asked if he had further clarification about the element of abduction in wilderness therapy.

A quick search on EBSCO had returned no indication of research highlighting concerns about the programs.<sup>15</sup> One article (Harper, 2009) suggested an increase in governmental scrutiny on wilderness therapy, mainly because of the high cost, and recommended considering additional family involvement and the possibility of boosting the number of services to decrease the travel cost associated. A Google search, with the same keywords, produced a very different outcome.<sup>16</sup> A BBC article (2009) introduced a glorified account of the life of a youth transport worker, with a brief reference to concerns raised from a child psychiatrist. Vice (Solomon, 2016), an

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<sup>14</sup> The term 'collaborator' was selected by young people in a self-defining exercise we completed whilst discussing the use of their knowledge to inform this piece of writing.

<sup>15</sup> EBSCO is an academic database.

<sup>16</sup> Keywords: 'wilderness, therapy, abduction, children'.

online magazine aimed at young people, described the phenomena as legalized abduction and offered a wider range of reflections, highlighting perceived benefits and experienced trauma, stressing the limited scope for fighting against these programs, even from a legal angle. On the phone, my friend confirmed that in some cases children require ‘additional support’ in the transit, but also reiterated the positive outcomes produced by this therapy, and indicated it surely was a great alternative to the medicalisation of children.

Amongst the articles found through the Google search, I had found a narrative from a young person who had experience this sort of camp three times (Rosen, 2014); I sent it to my friend to further the conversation with the hope we would reach a common ground. Nevertheless, his response provided the same narrative encountered in many academic articles on the topic: there is *some* evidence that the therapy is effective, there are issues as in any field, the parents are desperate and the children uncontrollable and dangerous. This poignantly reminded me of the documentary *‘This is what love in action looks like’* (Fox and Toscano, 2011), a story of a sixteen-year-old forced into a religious camp to be “cured” of homosexuality, and tangentially an incredible account of the power of DIY peer advocacy. Children as goods on a production line, like in the Pink Floyd video for ‘Another Brick in the Wall’, with the faulty ones off to meat mincer.<sup>17</sup>

Let’s start again. As children’s rights advocates, it is necessary to argue against child violence and abuse, whilst also promoting critical reflection on whether protection is effective in promoting children’s rights and interests. The number of publications on this topic does not fall short. As discussed in Archard (1993) the liberationist movement for children followed shortly after the rise of feminism and of the African-American rights movement, with its seminal texts being published in the 1970s. However, it did not accomplish as much as the other

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<sup>17</sup> As a child I often watched the video with my older brother, I think his suggestion was that the meat mincer was the destination for naughty children (in a determinist fashion, here is the source of my vegetarianism).

movements due to having limited supporters. Whilst feminism is frequently associated with children's rights for sharing the struggle for visibility and recognition in society (Burman, 2008), it could be argued its contribution to advancing children's rights has been limited. For example, the sanctification of motherhood as a unique experience of bond to the child and the refusal of concepts such as community parenting have validated a sense of ownership of the offspring (bell hooks, 2000). Holt (1975) disputed the commodification of children by challenging the ideas of 'help' and 'care' as pillars of the parent-child interaction. From a legal perspective, Archard (1990) argued against the absolute nature of parental rights, highlighting the dangers deriving from the idolisation of 'natural parenthood' to the detriment of non-biological forms of parenthood. The rights of parents are frequently used as leverage to obstruct the recognition of children's rights as human rights, with an argument being the risk of undermining the value and safety of the family unit (Guggenheim, 2005). Interestingly, these arguments also support the parental right to choose for children to be abducted in the middle of the night and sent to an unfamiliar place with strangers to promote their resilience and confidence. The argument that conferring legitimacy to children's rights would pose a risk to society, as children lack maturity and skills and require support, recalls in many ways the points raised by Buckley (1957) in his editorials in the *National Review* in opposition to granting civil rights to people of colour.

It is evident that theories based on the grounds of children being in need, innocent, incomplete and at/posing risk should be reconsidered and amended in light of the recognition and legitimation of children's knowledge, agency and rights (Cantwell, 2011, Archard, 1993). Protection can no longer be accepted as an argument to preclude the possibility of a critical review of existing theories and practices and can no longer prevail in the children's rights agenda at large (Holt, 1975, Burman, 2008, Wyness, 2015).



## Constructing Critical pathways

*'The only people who end up actually believing and, goddess for-bid, acting on the ideological doctrines of disembodied scientific objectivity are nonscientists, including a few very trusting philosophers'*

(Haraway, 1988, p. 576)

The development of critical pathways to promote a meaningful advancement of children's rights would therefore require a shift in the way we think of and about childhood. As proposed by Archard (1993) and bell hooks (2000) a move towards a collective society would enable an initial transformation in our understanding and attitude towards children, by promoting wider-scale principles of social justice, citizenship and equality.

The admonishment *'no revolution will abolish human mortality and biological development'* (Archard, 1993, p.161) reminds us of the importance of promoting, in theoretical efforts, awareness and acceptance of the situated nature of knowledge (Haraway, 1988). On a macro scale, we ought to recognize the possibility of theorising global principles (Freeman, 2011) whilst valuing local realisations and expressions that are situated in the historical, socio-economic context of performance (Haraway, 1998, Tzuo et al., 2011). This principle of situated knowledge has a fundamental role in enabling the recognition that it is only in encounters and conversations with children and young people that we can promote the construction of a new epistemology that not only empowers but also respects and is co-constructed by children's knowledge (Burman, 2008, Mayall, 2008).

The first step towards recognising children as humans fully entitled to their human rights would be not only the acknowledgement of their role as citizens, social actors and agents of change, but the teaching of it. The main argument for the development of critical pathways between theory and

practice is the recognition and development of Childhood Studies as a discipline that engages and informs interdisciplinary dialogues with other disciplines, like Queer and Feminist Studies do.

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## Chapter 3

# From ‘little drops of rights’ to ‘Article 12 in Action’

*Maria Stephens and Louise King*

### Abstract

This article explores the UN Convention on the Rights of the Child (the UNCRC) periodic reporting process and the participation of children in England in the 2016 Government examination, facilitated through Children’s Rights Alliance for England’s (CRAE) *See it, Say it, Change it* project. A detailed picture of the methodology and practices used to engage children and young people, especially those from marginalised groups whose rights are most at risk, is provided. Article 12 of the UNCRC enshrines the child’s right to express their views and be listened to. *See it, Say it, Change it* worked to make this right a reality for children and young people, and we present a model which could be adapted to other contexts. We also highlight some of the challenges we faced to ensure children and young people’s participation was meaningful and moved them towards full citizenship and away from tokenistic inclusion (Hart, 1991).

### Introduction

The UN Convention on the Rights of the Child (the CRC) was ratified in the UK in 1991, over 25 years ago. Since its

ratification, every child and young person in the UK, up to the age of 18 has been entitled to over 40 specific rights including the right to be listened to, the right to be kept safe from violence and the right to play. Despite this, in its most recent examination of the UK, the UN Committee on the Rights of the Child (the UN Committee) highlighted it had ‘serious concerns’ about the UK Government’s failures to prioritise children’s needs and rights.

At the CRAE we work with our 150 organisational and individual members to promote children’s rights. We believe that human rights are a powerful tool for making life better for children. We fight for children’s rights by listening to what they say, carrying out research to understand what children are going through and using the law to challenge those who violate children’s rights. We campaign for the people in power to change things for children. And we empower children and those who care about children to push for the changes they want to see.

CRAE has engaged with each CRC periodic reporting cycle and examination of the UK Government by the UN Committee by coordinating the civil society alternative report for England (in 2015 it was supported by 76 organisations), giving oral evidence at the Pre-Sessional Working Group in Geneva and ongoing engagement with UN Committee members to ensure it receives an accurate and representative picture of the state of children’s rights in England.

One of the most important aspects of our work on the CRC periodic reporting process is to support the participation of children themselves. In 2015, we supported a steering group of 22 children and young people, age 7-18, to research and write the *See it, Say it, Change it* report (CRAE, 2015) from children in England. Research for the report involved nearly 1000 children nationally and the report was submitted to the UN Committee in July 2015. Members of the steering group also travelled to Geneva to meet directly with UN Committee members.

When the UN Committee released its verdict on the UK’s children’s rights record in June 2016, the influence of evidence submitted by children and young people, both in their report and at meetings with the Committee in Geneva, was clear.

Amongst other recommendations, it said that the government needed to stop housing children in poor quality, temporary accommodation for long periods of time – an issue which had been highlighted in the children’s report. With the support of CRAE, children and young people involved in the reporting process are now leading a campaign on this issue.

Without opportunities for meaningful participation, the realisation of children’s rights will always be limited and potentially ineffective in truly meeting children’s needs. During research for the children’s report an eight-year-old girl described her view of children’s access to their rights: *‘It’s just little drops of rights’*. Article 12 of the CRC enshrines the child’s right to express their views and be listened to, but despite this children and young people’s voices often remain unheard and their rights are overlooked in policy and budgetary decision making. It is only if we can put Article 12 into action that states can move closer to the true and complete realisation of the CRC.

This article explores the journey for a group of children from England from experiencing their rights as *‘just little drops’* towards putting Article 12 into action. It begins with an overview of the CRC periodic reporting process before going on to explore CRAE’s role in it and the participation of children in England in the 2016 Government examination, facilitated through CRAE’s *See it, Say it, Change it* project. A detailed picture of the methodology and practices used to engage children and young people, especially those from marginalised groups whose rights are most at risk, is provided. The ways in which children and young people involved in the project were able to take action is also explored, exemplifying the types of activities and influence the group engaged in. The final section highlights some of the challenges we faced to ensure children and young people’s participation was meaningful and moved them towards full citizenship and away from tokenistic inclusion (Hart, 1992).

## **About the CRC**

The CRC was adopted by the UN on 20 November 1989 and was ratified by the UK Government in 1991. It applies to all

children aged 17 and under and sets out the minimum standards for their treatment. It includes a wide-ranging set of rights – civil, political, economic, social and cultural. It covers all aspects of children’s lives, including the right to health and access to health care, the right to freedom of expression, the right to an education, the right to play, the right to be protected from all forms of violence, and the right to an adequate standard of living. It also gives additional rights to children who are in particularly challenging situations - those in conflict with the law, disabled children, those who have suffered abuse, refugee children and children seeking asylum.

The CRC has four general or guiding principles. These are rights in themselves but are also the framework through which all the rights in the CRC should be interpreted. They are: non-discrimination (Article 2); the best interests of the child (Article 3); survival and development (Article 6); and respect for the views of the child (Article 12). The CRC is the most widely ratified of all human rights treaties.

## **The periodic reporting process**

The CRC is monitored through a periodic reporting process which is overseen by the UN Committee and which states are required to participate in. This section gives an overview of that process and the ways children and young people and civil society can engage. The UN Committee was established in 1990. Its members are elected by countries that have ratified the CRC (known as States Parties). It is based in Geneva and meets three times a year. There are 18 members of the UN Committee – all independent experts on children’s rights – including academics, psychologists, social workers and lawyers. Its main purpose is to monitor how well states comply with the CRC through constructive dialogue with the government. The primary means of monitoring compliance is the periodic reporting process. The reporting process is also a crucial means of mobilising civil society (charities, NGOs and children and young people) to push for changes to ensure children’s rights are being met and ultimately children’s lives improved.

Following the ratification of the CRC, states are required to report to the UN Committee two years after the CRC comes into force, and then every five years. In practice, the length of time between reporting cycles is often longer than five years.

The stages of the reporting process when the See it, Say it, Change it project was carried out are as follows:<sup>18</sup>

## 1. The State Report

The reporting process begins with the development of the State Report. The UN Committee has provided guidelines on what should be included and good practice (for example involving and consulting with civil society). It should provide the UN Committee with a comprehensive review of the children's rights situation in the country and cover all measures undertaken to implement the CRC, backed up with detailed statistics. Governments must also say how they have responded to the Committee's previous recommendations. The report must be divided into nine thematic "clusters" of rights. This "cluster" format is followed throughout the reporting process.

In preparation for the 2014 State Report, the UK Government consulted with a stakeholder group - including CRAE, the Children's Commissioner for England, Save the Children, UNICEF UK and the British Youth Council. CRAE also met with civil servants during the drafting of the State Report and lobbied for the inclusion of various children's rights issues, data and statistics and for the engagement of children and young people in the report. There is an expectation that children and young people will be involved to some degree in the State Party report. However, there was very little direct engagement on the part of the UK Government with children. The report did set out how the government has included children in, for example, consultations on policy issues, but it did not include reference to the views of children on how much they themselves feel their rights are being respected.

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<sup>18</sup> NB some States Parties will now be examined by the UN Committee under the Simplified Reporting Process which differs to that set out above.

## **2. Alternative Reports**

The CRC specifically allows for reports from “other competent bodies”, including civil society, independent human rights institutions and children’s groups, to gain a more detailed understanding of children’s rights in the country. These reports help to fill in the gaps in the State Report and clarify misleading or incorrect information.

The civil society report is an opportunity to include children’s voices in the reporting process, help organisations engage in the process, and raise concerns and make recommendations at the international level. Alternative Reports should be submitted at least three months before the Pre-Session (see below) to ensure they are taken into account and translated.

## **3. The Pre-Sessional Working Groups (“The Pre-Session”)**

The Pre-Sessional Working Group is a private meeting between the UN Committee, NGOs, independent human rights institutions, other international organisations and children. It takes place around four months before the Plenary Session with the States Party (see below). It is a chance for NGOs and children to highlight the main areas of concern, give their opinions of the State Report and add any information since the submission of their reports. Only NGOs that have submitted written information will be invited to attend. Meetings are confidential and no records are produced - this enables participants to speak freely.

## **4. List of Issues**

The Pre-Session enables the UN Committee to identify a “List of Issues” which highlights further information required. This frequently focuses on more information, including statistics, on violations of children’s rights, and lists the key areas of concern that the UN Committee will address at the Plenary Session.

## 5. Written Replies

This document contains the written answers to the “List of Issues” by the States Party and must be submitted at least one month before the Plenary Session. NGOs may feed into the Written Replies or they may submit their own supplementary information. All this information frames the discussion between the UN Committee and the government being examined.

## 6. The Plenary Session

This is the main meeting between the States Party and the UN Committee that takes place over a full day (two three-hour sessions). The UN Committee will ask a series of questions in the thematic “cluster” format and the government delegation will be given the opportunity to respond. Although this meeting is public, civil society representatives may only attend as observers. In the UK, this is typically attended by a delegation made up of senior civil servants led by a Director General. In some instances, a government Minister attends.

## 7. Concluding Observations

This is the outcome document of the reporting process. Following the thematic “cluster” format, the UN Committee first highlights positive developments, then goes on to outline its concerns and recommendations. The final paragraph of the Concluding Observations sets the date for the next States Party report.

The Concluding Observations end the session, not the process. The Concluding Observations should set an agenda for action over the coming five years or more until the next report is due. As the recommendations aren’t legally binding, civil society, including children and young people have an important role to play in ensuring the recommendations are fully implemented by the government.

## **CRAE's role in the reporting process**

CRAE has played a leading role in influencing the UN Committee in all the UK reporting cycles (1995, 2002, 2008 and 2016). We coordinate the England civil society alternative report and support children to make their own submissions. CRAE also gives evidence directly to the UN Committee and meets with individual Committee members to discuss key child rights breaches and we support children to do the same.

In the run-up to the UK Plenary Session, CRAE coordinates civil society to push for change. After the Concluding Observations are published, we hold the government to account on the recommendations made by the UN Committee to make sure they are fully implemented. Every year we publish *our State of Children's Rights in England* report. This sets out the progress being made on taking forward the Concluding Observations and where the government needs to do better. It is a key tool for civil society.

## **See it, Say it, Change it: Article 12 in Action in the CRC reporting process**

Participation in its broadest sense is based on an ideology of ideal types of inclusion, citizenship and democracy in everyday life (Dilworth and Macready, 2014). Children are entitled to freedom to express opinions and have a say in matters affecting their social, economic, religious, cultural and political life. Engaging these rights as they mature helps children bring about the realisation of all their rights and prepares them for an active role in society. The CRC enshrines participation rights and respect for the views of children, it includes the right to express opinions, the right to information and freedom of association (UNICEF, 2017). As noted earlier, Article 12 gives children a right to be listened to and to have their views taken into account in decision making.

The rights children and young people have to participate as citizens of a democracy are often limited and not fully accorded to them until adulthood. For this reason, spe-



cific structures which seek to engage with children and young people are required to create meaningful opportunities for participation where children and young people are able to make choices that shape their environment, direct their own development and have agency as responsible actors (Hamilton and Hamilton, 2004). This section showcases the processes and methodology we used to create the *See it, Say it, Change it* project and put Article 12 into action by ensuring children's voices were central to the examination of the UK by the UN Committee.

## **See it, Say it, Change it**

The *See it, Say it Change it* project was set up by CRAE in 2015 with funding from the Paul Hamlyn Foundation, a charitable trust. The project supported children and young people in England to tell their side of the story to the UN Committee as part of the 2016 examination of the UK Government. It supported them to engage in the UNCRC reporting process in a number of different ways, including researching and writing an alternative report, attending meetings with the UN Committee in Geneva and observing the UK Government examination. Participation was central in the design of the project, which ensured children and young people could take the lead in research and project management with support from CRAE staff, increased visibility for young people and their views, and supported them to campaign on issues raised in the reporting process (McCready and Dilworth, 2014).

## **The Steering Group**

The first stages of *See it, Say it, Change it*, focused on bringing together a steering group of children and young people to lead the project. A Participation Manager was appointed in January 2015 and a recruitment process for the steering group began in the same month. CRAE produced differentiated materials for children and young people of all ages and abilities which explained what children's rights are

and clearly illustrated their importance in the daily lives of children and young people. The materials also aimed to increase children's understanding of the reporting process by giving a child-friendly overview which emphasised the importance of children's voices being heard directly by the UN Committee. The complexity of the reporting cycle required careful unpicking to make it more child-friendly and importantly the materials produced assumed little or no previous knowledge of children's rights, the UNCRC or the UN Committee.

To ensure the group was diverse and representative we undertook targeted recruitment, reaching out to organisations supporting children and young people whose rights are most at risk, for example those growing up in care, children who have faced homelessness, disabled children, children from minority religious and ethnic groups and younger children. CRAE staff visited specialist organisations, as well as schools in deprived areas, to share information about the project and encourage children and young people to get involved. The opportunity to join the group was also publicised through a national recruitment campaign shared with relevant contacts and with our membership network and on social media.

We invited children and young people who were interested in the project to submit an application that, crucially, could be writing, drawings, sound recordings or videos. We received over 70 applications from across England. Staff at CRAE worked with our young trustees to select 22 children and young people from these applications. It was a difficult job and we focused on achieving a balance in the group in terms of age, regional representation, and inclusion of different groups. We worked to select young people who expressed a real desire or need to have their voice heard and prioritised children in difficult situations. Many of these applications had only a few words written on them but offered us a glimpse into the challenges facing children who applied. We arranged to meet children and young people in person or to talk over Skype to find out more. Skype and face-to-face meetings were not presented as interviews but as informal conversations in which children and young people could find out more, ask

questions and share their ideas. Every attempt was made to make these feel like a chance to explore children's rights and the *See it, Say it, Change it* project and not like a test.

In February 2015, the *See it, Say it Change it* steering group was formed, a group of 22 children and young people age 7-18 from all over England. Many members of the group were new to children's rights and participation and we successfully engaged children and young people whose rights are most at risk including those growing up in foster and residential care; children facing homelessness; transgender children; children who had been in trouble with the law; disabled children; children with special educational needs; children from minority ethnic and religious groups; and children from rural areas. With support from CRAE, this inspirational group of children and young people researched and wrote the report from children in England to the UN Committee.

## **Writing the See it, Say it, Change it report: Methodology and Support**

The *See it, Say it, Change it* steering group were supported by CRAE through a series of day meetings which took place in London, and a residential trip to a farm in Wiltshire. The meetings focused on teaching the group more about children's rights, the reporting process and research methods.

We trained the steering group in research skills and co-produced a survey which was sent out nationally and received nearly 1000 responses. In the section below the steering group members Rozita, Mark and Renee (aged 16-17 years old at the start of the project), speak out about their experience of the methodology used to research and write the report:

*The aim of the project was to review the state of children's human rights in England. We wanted to find out about what life is like for children and raise awareness about rights at the same time. Most importantly we wanted to highlight the ways in which children's rights are not being met and recommend changes that need to be made to the UN Committee and the UK Government. We think*

*a child being able to have a say on how well their rights are being respected is an integral factor contributing to how well a child can live their life.*

*Our first meeting in London was an introduction to the See it, Say it, Change it project where we learnt more about each other and started to develop our campaigning and communication skills. We talked about some of the big children's rights issues that we were worried about and wanted to highlight to the UN Committee.*

*Our second meeting (a one-night residential trip to a farm) focused on planning our research. The research had two parts: an online survey and focus groups. We worked with CRAE staff on the content of the survey and the focus group questions. We changed the wording of questions and made suggestions for extra ones. We also received training from CRAE staff and with their support we were able to develop our interview skills (predominantly for use during focus groups). Here we also separated into a few smaller groups such as the writing and editing group, the networking group and the social media team.*

*After that we worked in our schools (for example through assemblies and notices to pupils) and with our friends in order to raise awareness about the project, the online survey and focus groups. All of us were involved in promoting the online survey and many of us led focus groups.*

*We were really pleased that nearly 1000 children and young people from all over England took part in the research. 137 children and young people took part in focus groups and amazingly 840 people completed our online survey! It was only set up for a limited time and we had a goal of 600 responses, however going over target meant we had more stories and opinions to hear and that our research was more accurate and reliable.*

*After the research was completed the steering group came together to look at the findings. We talked about what issues we wanted to highlight in the report. We looked at quotes and decided which ones to include and started writing our recommendations.*

The children's report was submitted to the UN Committee in July 2015 alongside other alternative reports. A launch of both the civil society report and the children's report took place on the same day they were submitted to the UN at an event in the House of Parliament, hosted by Tulip Siddiq MP. It was attended by over 100 people, including representatives from a broad range of children's charities, parliamentarians and children and young people. The launch event was complimented by a Parliamentary Question and wide-spread media coverage, including articles in the national media and in over 100 local news outlets. Members of the steering group spoke at the event and shared their experiences of developing the children's report.

## **Further engagement with the UN Committee and ongoing influence**

Submitting the report was a key milestone in the *See it, Say it, Change it* project and preceded some of the most important and inspiring examples of Article 12 being put into action by the project. This section lays out instances of engagement with the UN Committee by the steering group and the ongoing work to influence decision makers to take action to better support children's rights.

## **Visit from the UN Committee Taskforce**

In September 2015, after the submission of the alternative reports, CRAE and other UK children's rights alliances met with taskforce members from the UN Committee. The taskforce visit was organised and hosted by the four UK Children's Commissioners, and was an opportunity to follow up on evidence submitted to the UN Committee prior to the 72<sup>nd</sup> pre-sessional. The taskforce met with refugee children; children and young

people in the secure estate and families living in poverty to discuss their experiences of rights violations. Two members of the taskforce visited England, meeting with children and young people from Amplify – the Children Commissioners advisory group and CRAE’s *See it, Say it, Change it* project. Three members of CRAE’s group attended the meeting and were able to present issues they felt most strongly about, including violence against children and housing and homelessness. Taskforce members also met with children and visited institutions across Scotland, Northern Ireland and Wales.

## **The Pre-Sessional and Children’s Meeting**

In October 2015, 17 members of the steering group travelled to Geneva to present evidence at the pre-sessional and attend a special meeting between children from across the UK and the UN Committee. Although unusual for such a large delegation of children to attend, CRAE’s commitment to the group’s participation meant the maximum number of children benefited from the opportunity to increase their knowledge and understanding of the UN by visiting Geneva. Not all children and young people were able to meet directly with the UN Committee. At a meeting in the run-up to the trip the children and young people had self-organised into working groups deciding who would attend the pre-sessional; the meeting between children and the UN Committee; and lead a social media and blogging group. This allowed the group to work effectively to support one another and share their experiences in Geneva more widely.

At the Pre-Session, CRAE and members of the steering group presented alongside other children, and representatives from National Human Rights Institutions, NGOs, and Children’s Commissioners from across the UK. Four members of the *See it, Say it Change it* steering group attended the pre-sessional where they read out statements on children’s rights issues highlighted in the report and were able to respond directly to questions from the UN Committee. Key areas raised by the children at the pre-sessional were: life in care, violence against children and experiences of Islamophobia.

In the section below, steering group member Zakya, aged 14 at the time of the pre-sessional, shares how participating in the reporting process increased her confidence in her right to be heard:

*Going to Geneva was a truly life changing experience! I feel more confident when discussing and debating, and more able to share my views on children's rights and what needs to change. I gained an insight into how the UN works and learnt much more about issues affecting children and young people across the UK.*

*Having been listened to by the UN, I now know that even though I am a young person my ideas and thoughts deserve to be respected. Participating has given me an even greater passion for influencing change and promoting respect for all human rights.*

*At the Pre-Sessional Working Group meeting I read out a statement about children's rights in England. It focused on children in care experiencing harm and neglect, and violence against children who are in contact with the police. These are issues I am really concerned about.*

*After we had read out the statements, the Committee asked us all questions, including some on the evidence children had given in their statements. For example, they asked why the police were being violent towards children and why the government wasn't organising more training for the police. I was able to answer some of these questions and it felt great getting my issue across to the UN Committee as I knew this might have a positive impact for children in England.*

As well as participating in the pre-sessional, children and young people had their own private meeting with members of the UN Committee. This was attended by eight members of the steering group as well as by other children from across the UK. The introduction of the meeting is a very positive step towards supporting children's participation in the reporting process. In

previous reporting cycles, children had only had the opportunity to meet with UN Committee members over lunch.

The introduction of the meeting reflects responsiveness on the part of the UN Committee to previous feedback from NGOs who had supported children's participation. However, children still experienced some barriers to participation during the meeting. Emma, who was aged 11 at the time of the meeting, shares her experience below:

*In the Children's meeting, we did a presentation to four or five members of the UN Committee and then we were asked some questions. We shared the meeting with delegations from Scotland, Wales and Northern Ireland and met up before to make sure we all had an equal amount of time. My presentation was on health and its main focus was the barriers within the health system, particularly around transgender children, non-verbal children's communication and lack of adequate provision for children with mental health issues. Other areas we focused on included violence against children in care and standards of living and respect. The presentations from the other regions were very interesting and it was noticeable how similar the problems from all four regions were.*

*The room where the meeting was held was very grand and we had to wear headsets to listen to what everyone else was saying and we had to press a button when we wanted to talk. Because I'm in a wheelchair this was tricky because every time I leaned forward to press the button my headphones fell off and I couldn't put them on again. One of the other children in our group had to help me.*

One of the guiding principles of the CRC is non-discrimination (Article 2), yet Emma's account articulates additional barriers affecting her access to Article 12 rights as a disabled child. Her experience identifies that even in a setting attempting to give children and young people access to their rights, they can be unintentionally excluded and silenced; a particular problem for children from marginalised groups, including disabled children.



## The List of Issues

The List of Issues, published by the UN Committee after the pre-sessional included requests for more information on many of the key child rights issues raised by children in meetings with the UN Committee as well as by CRAE and other organisations. Further information was requested on proposals to repeal the Human Rights Act and replace it with a Bill of Rights; on the use of restraint on children in education, the 'secure estate' and immigration institutions; frequent placement moves for children in care; the amount of contact children in care have with their birth families; numbers of children being admitted to adult mental health wards; and the numbers of children being housed in temporary accommodation for more than six weeks.

It was really positive that the List of Issues reflected the evidence presented by CRAE, and in particular the voices and experiences of children in England. Some of the concerns raised linked specifically to evidence presented by children from CRAE's *See it, Say it, Change it* project. For example, in the children's meeting Renee, age 16 at the time, described her experience of living in temporary accommodation for nearly two years, highlighting a breach of the six-week legal limit and the impact this had on her education, an issue which was highlighted by the Committee. CRAE's response to the government's Written Replies, which it submitted in partnership with other organisations in the UK, also reflected evidence from children and young people included in their report to the UN Committee.

## The Plenary Session

Two members of the steering group and CRAE staff observed the UK Government examination in Geneva in May 2016, along with representatives from National Human Rights Institutions, NGOs, and Children's Commissioners from across the UK. All children who attended the examination were given the opportunity to meet with some UN Committee members

in between examination sessions. This was a fantastic opportunity for the children and young people to clarify issues that had been raised and again give the UN Committee real insight into issues children and young people in the UK felt to be most important. Children were also able to suggest how the UN Committee might target their questioning of the UK delegation to explore these issues. Steering group members from *See it, Say it, Change it* shared very moving personal accounts of rights violations they had experienced growing up in care and living in temporary accommodation for extended periods.

After the formal examination sessions had finished, the steering group members interviewed the Head of the UK delegation. In their interview, they asked questions about the UK Government's plans to follow up on the forthcoming Concluding Observations and gained a commitment for further meetings with children.

## **The Concluding Observations**

The UN Committee released its Concluding Observations on the UK in June 2016. Though recognising some positive progress on implementing the CRC, the UN Committee made over 150 recommendations for action, many of which respond to issues identified specifically in the children's report and which had been highlighted by steering group members in their meetings with the UN Committee. On the day of publication, CRAE issued a joint press release urging the UK Government to take action with supporting quotes from our Director, Louise King, and senior staff at other national children's charities including Action for Children, Barnardo's, Coram Children's Legal Centre, National Children's Bureau, the Children's Society and UNICEF UK. The press release also included a quote from steering group member Renee, then aged 17:

*We're not just statistics and figures. We are very real children, with very real issues whose needs should be protected. I spent two years living in temporary accommodation, in dirty cramped conditions, and I have spoken to other children with identical stories to mine or, in some*

*cases, even worse. The legal limit is meant to be six weeks. Children's rights prevent these and many other injustices happening to children. We want to see change. The government must act on the UN recommendations.*

The recommendations made in the Concluding Observations provide a strong tool for advocacy on key children's rights on issues including housing, life in care and mental health. Children involved in the project have taken different kinds of action including written blogs and regular meetings with parliamentarians and government including the then Children's Minister, Edward Timpson. They have also increased their knowledge of human rights and how to take action and published a series of '*Children speak out*' briefings on areas of concern highlighted in the Concluding Observations and the *See it, Say it, Change it* report including youth justice and life in care (CRAE, 2016/17).

## **Next Steps**

In 2016, CRAE successfully gained funding from Comic Relief to continue the project into a campaigning phase, *Change it!* This project supports children and young people to campaign on an issue highlighted in the UN Committee's recommendations which was important to them. CRAE staff worked with the group to plan recruitment for new members of the steering group and select a campaign issue through analysis of the UN Committee's recommendations. Through deliberative discussion and voting the group selected homelessness as the focus of their campaign. In their recommendations the UN Committee said that the UK needed to stop housing children in poor quality, temporary accommodation for long periods of time – an issue which had been highlighted in the children's report. Numbers of homeless families are rising year-on-year: in 2015, 38,040 families with children were homeless, an increase of two thirds from the 23,850 in 2009; in 2016, 3,390 families with children were living in bed and breakfasts (B&Bs), more than double the number at the end of 2013 (1,560). In 2016, over a third of families housed in B&Bs lived there for longer than six weeks, 1,300 in total. This is a growing problem and specialist

housing charities, including Shelter, have welcomed the launch of the *Change it!* campaign and recognised the importance of children having their voices heard.

## **The impact of participation; a young person's perspective**

The most important views regarding the impact of participation in the reporting process are those of the children and young people who took part. In this section Rozita, 17 at the time of the visit to Geneva, gives her perspective:

*I joined See it, Say it, Change it in February 2015. The steering group's aim is to provide adult decision makers with young people's evidence on how our rights aren't being met – instead of adults showing how children's rights aren't met. Meeting decision makers face-to-face has been very exciting for the group! After we launched our report we met Edward Timpson MP [the then Children's Minister] and were able to make him aware of important issues the report included. Meeting with the UN Committee directly was far more powerful than just submitting our report, we have been able to see this by the issues included in the Concluding Observations that link to the evidence we gave in meetings.*

*We have also participated through feeding into other organisations for example some members of the steering group have spoken to students at the University of London and others have taken part in panels, for example at City Hall. It has been inspiring to be able to participate beyond CRAE and be part of a bigger network as we have been able to effect change on a larger and more meaningful level.*

*Participating overall has been amazing; we have developed loads of different skills; working with people of a wide range of ages; public speaking; and writing skills. By participating as a group and working together as a team we have been far more effective than on our own, and we've*

*made amazing friends! Being empowered to research for ourselves has been very important in making participation meaningful as we have more voice and control over what's being produced and being asked to comment on adults' work gives us a bigger role. Understanding the reporting process has been very empowering for me. It has made me want to continue to work on children's rights in the future and to try and ensure that even more children's voices are included.*

## **Challenges to participation**

In developing the *See it, Say it, Change it* project CRAE staff employed the skills and practices necessary to create conditions in which children and young people could participate effectively. Staff acted as non-formal educators – employing values, principles, and expertise to ensure as much as possible that children and young people had ‘meaningful opportunities’ for participation through power-sharing (Macready and Dilworth, 2014) and child and young person-initiated, shared decision making (Hart, 1992). However, at points during the project organisational and structural challenges presented blocks to meaningful power-sharing and sometimes pushed our work with children and young people on the project closer to consultation and involvement of young people and away from shared decision making (Hart, 1992). The section below lays out some of challenges to participation that we incurred and which might be relevant to others seeking to engage children in the reporting cycle.

## **Timeline**

As the UN Committee had a backlog of States Parties due to be examined, we had initially been told that the UK examination would not be held until summer 2017. However, the UN Committee cleared the backlog quicker than expected and it was announced in late 2014 that the UK Government’s examination was being brought forward by over a year. The *See it, Say it, Change it* project was in the early stages of development

and the Participation Manager was not yet in post. The new date for the submission of alternative reports, including the children's report, was 1st July 2015. It allowed just over six months for CRAE to engage with children and young people nationally and support them to produce the report. It also required us to renegotiate project funding, targets and deadlines. This led to extreme pressure being placed on the timeline of the project and in turn impacted on the way we were able to facilitate children's participation. For example, the steering group wrote the introduction and methodology sections of the children's report but themed chapters were written by CRAE staff. The themes in the chapters reflected the concerns and experiences of the steering group, and the key findings from the research and the steering group reviewed all the text, including quotes, edited and approved the chapters and wrote the recommendations with support from CRAE staff. However, time did not allow for the steering group to write the chapters themselves as planned. Had time allowed, each themed chapter would have been co-authored by CRAE staff and young people, or handed over more fully to the steering group to write collaboratively.

## Resources

CRAE is a very small organisation with just four employees. Although we merged with Just for Kids Law at the end of 2015 (a larger organisation with similar values and aims), which has increased our capacity, during the reporting process our resources were very limited. As noted by Hart (1992), supporting participation of marginalised groups of children and young people requires advocates to work doubly hard to ensure diversity in terms of class, age and gender and connecting with children and young people not already involved in participation forums. Running a national project focused on engaging children and young people from marginalised groups is resource-heavy and presented a huge challenge to CRAE. As well as extreme pressure being placed on the timeline of the project, pressure was also placed on the Participation Manager as the one member of staff fully dedicated to the project.

The external context for this work is also highly challenging with large numbers of children's charities competing for very limited funding streams from trusts and foundations. No public money is available from the UK Government for children's participation in the reporting process and the *See it, Say it, Change it* project was only made possible with support from the Paul Hamlyn Foundation and the Equality and Human Rights Commission, who provided money for our visit to Geneva.

## **Existing Participation Structures**

There are some great national participation structures in England. However, they tend to be aimed at older children and young people, with little available for younger age groups. Ensuring the voices of children from a wide range of backgrounds can be heard requires a variety of approaches and structures which are not currently available in England. An additional challenge has arisen from cuts to the youth services over the last ten years (National Youth Agency, 2017). Youth workers have traditionally had an important role in supporting children from marginalised backgrounds to participate both within youth organisations and within outward facing forums like youth councils or children in care councils. Cuts to youth services mean this much-needed support is simply not there.

## **Policy Context for Children's Participation**

The current policy context is extremely challenging for CRAE and for children's human rights. The UK Government has publicly stated that it plans to repeal the Human Rights Act and replace it with a British Bill of Rights, a move that will restrict protections to certain groups. This is part of a wider narrative suggesting an intentional move away from universal international human rights standards. In 2015, the revised Ministerial Code removed a reference to international treaty obligations. In contrast, the previous version stated there was an 'overarching duty on Ministers to comply with the law including international law and treaty obligations and to

uphold the administration of justice' but now it simply states that Ministers must comply with '*the law.*' CRAE is concerned that the removal of this reference will mean that Ministers will take their obligations under the CRC and other human rights treaties less seriously, which of course includes children's participation rights. However, positively we have found that our ongoing advocacy led by children and young people in the steering group continues to engage successfully with decision makers, including the Children's Minister, despite the challenging context in which we are working.

## Conclusion

The UN Committee have consistently advised that the most powerful driver for implementation of the CRC within a nation comes through giving it direct force in domestic law. Since ratification of the CRC the UK has been examined by the UN Committee five times and some positive progress on implementation has been made. Yet, this progress has been limited and in their 2016 recommendations to the UK, the UN Committee urged the government to 'expedite bringing its domestic legislation in line with the Convention to ensure that the principles and provisions are directly applicable and justiciable under domestic law.' Lack of compliance with Article 12 and a failure to take into account children's views was highlighted as an area of particular concern and the recommendations concluded that 'many children feel that they are often not listened to' by professionals who they interact with in everyday life such as social workers, independent reviewing officers, paid carers, and teachers. The UN recommended that systems and structures be established to ensure meaningful involvement of children in decision making at both national and local level, including in education, leisure and play and noted: '*Particular attention should be paid to younger children.*'

The testimony of children and young people involved in the *See it, Say it, Change it* project highlights the importance and value of opportunities for meaningful participation and how children of all age groups can participate with the right



support. Children's voices were crucial in the 2016 reporting cycle to ensure the Committee received a clear picture of the ways in which children were, or in many cases weren't, experiencing their rights. The *See it, Say it, Change it* project ensured that children's experiences of their rights became more than '*just little drops*' by creating opportunities for meaningful participation and putting Article 12 into action so children and young people were heard by decision makers including the UN Committee and the UK Government.

Children and young people's voices must be better taken into account to ensure policy making respects children's rights and meets their needs. Without the inclusion of their views and experiences, policy will continue to fail children and their experience of their rights will always remain '*just little drops*'. At CRAE we believe that meaningful participation is both possible and essential and we encourage all governments to support children themselves and organisations working with and on behalf of children, to participate in decision making.

We believe that the work of the *See it, Say it, Change it* project provides a model which can be adapted to other contexts to help increase children's participation in the CRC reporting process and follow up advocacy and ultimately improve the implementation of children's rights.

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## Chapter 4

# The Challenges of Teaching Children their Rights in a Violent Context

*Gabriela Martínez Sainz*

### Abstract

Children living in societies severely affected by violence deal on a regular basis with a broad spectrum of human rights violations and abuses, either as witnesses or as victims themselves. Such contexts increase the complexity of teaching children about their rights as these are far from being a reality around them; thus, human rights educators are forced to develop pedagogical strategies to face these contextual challenges. This chapter focuses on Mexico as an exemplary case to explore the challenges and strategies for human rights educators due to the alarming crisis of violence and the increasing levels of abuses and violent incidents affecting children in the country. The chapter discusses the way in which Mexican educators make sense of human rights and human rights abuses to teach the subject; the challenges they face specifically when teaching children about their rights; and the strategies they implement to overcome them. Through the examination of educators' reflective practice, it is possible to better understand the way in which educators' narratives and practices are developing a more critical pedagogy on the ground while creating a more radical framework for Human Rights Education.

## Introduction

Children have the right to learn about their rights. They need to develop the required knowledge, skills and attitudes to exercise their own rights and protect the rights of others. Education, in this sense, is a right in itself but also “functions as a multiplier, enhancing all rights and freedoms when it is guaranteed while jeopardizing them all when it is violated” (Tomashevski in Jerome, Emerson, Lundy, & Orr, 2015). Thus, Human Rights Education (HRE) has a significant role in securing the enjoyment and protection of children’s rights as it enables the process by which children can learn *about*, for and *through* their rights (UN, 2011).

Despite its significance for children’s rights, HRE faces important challenges in its application. Previous research has already identified key obstacles in policy implementation (Lundy, 2012), incorporation into formal schooling (IIHR, 2006; Judy Sebba & Carol Robinson, 2010; Mejias, 2012), or inclusion into teaching materials and textbooks (Iturralde & Rodino, 2008; Meyer, Bromely, & Ramirez, 2010). One of the most important challenges, however, is related to teachers’ knowledge or familiarity with human rights and their training in this subject (Cassidy, Brunner, & Webster, 2013; Waldron et al., 2011). In particular, growing evidence demonstrates the impact of teachers’ knowledge about rights – or lack of thereof – (Decara, 2014; Messina & Jacott, 2013) as well as the importance of educators’ positive attitudes (Gündo du, 2010; PirsI, Marusic-Stimac, & Pokrajac, 2005) for the actual implementation of HRE. However, much less is known about the impact of the context on educators’ knowledge and attitudes, how working in challenging contexts can influence their teaching practices or how the contextual particularities shape the purposes and aims of HRE.

So far, the importance of HRE in post-conflict societies has been widely accepted (Abraham Magendzo, 2005; Osler, 2005; Tibbitts, 2008) and its role in processes of reconciliation also has been discussed (Beirne & Knox, 2014; Niens, Reilly, & Smith, 2006). However, and despite the recognition of the

problems ‘hellish’ and violent contexts pose to HRE (Okafor & Agbakwa, 2001), there is insufficient empirical data showing the challenges of implementing HRE in contexts that are still affected by conflict. Societies affected by conflict deal on a regular basis with a broad spectrum of human rights violations and abuses. Considering the experiential nature of HRE (Bajaj, Cislighi, & Mackie, 2016; Abraham Magendzo, 2005; Mujica, 2007) which emphasises the need to learn about and for human rights through experiencing the actual enjoyment of these rights, it can be expected that teaching in contexts where these rights are far from being a reality will raise additional challenges to the already complex endeavour of HRE. In particular, teaching children and young people about their rights under these circumstances will certainly increase the difficulties and obstacles as these rights might be difficult to relate to in the first place and the stress they might suffer from being surrounded by violence on a regular basis. The present chapter addresses the challenges human rights educators face, as well as the pedagogical strategies they develop to teach children in these contexts by exploring their professional judgements in-action and on-action.

## **Educators’ judgements**

Human rights educators need to make constant judgements in their professional practice (Starkey, 2012). These judgements encompass not only deliberations on-action but also in-action (Schön, 1983), in which educators reflect about their professional practice not only after they teach but also while they are teaching. When these reflections are used to inform their professional practice, educators are acting as reflective practitioners (Heilbronn, 2010; Loughran, 2005). Reflective practice in HRE encompasses, therefore, deliberation about the content to be taught, such as the interpretation of human rights, their legal framework or the international instruments that protect them. It also focuses on the educational aspects of teaching human rights, including choosing among different teaching approaches, selecting and implementing effective

strategies or establishing adequate learning outcomes. Reflective practice also incorporates the decision-making process of adapting content and teaching strategies to meet learners' needs and the deliberation when confronted with ethical dilemmas in professional practice (Martínez Sainz, 2015).

Focusing on educators' judgements makes it possible to better understand the challenges of teaching children about human rights in general, and specifically, to do so in a context affected by conflict and violence. This is particularly relevant considering how the implementation of human rights policies, in general, varies significantly in relation to where these are implemented (Risse, Ropp, & Sikkink, 2007). Thus, educators' judgements allow for the exploration of what educators think and what they do as part of the implementation process of HRE. Furthermore, educators' lived experiences (Osler & Zhu, 2011) and personal accounts, even outside their reflective practice, are valuable insights into the challenges they face working in a violent context and the strategies they implement to overcome them.

In the current study, educators' reflective practice and the judgements they perform on-action and in-action are examined drawing upon the notion of *phronesis* or practical wisdom (Kinsella & Pitman, 2012). *Phronesis* recognises educators' knowledge construction as a process constantly informed by experience, reflection and judgements (Doddington, 2012) and emphasises the deliberation process as the link that makes possible the translation of educators' knowledge into teaching practices (Heilbronn, 2008).

## **Violence affecting children and young people in Mexico**

The present chapter focuses on human rights educators working in Mexico. This country was selected as an exemplary case of a society affected by violence due to its alarming crisis on human rights violations and abuses, violence that is affecting children and young people. This crisis has been recognised at a national and international level, as international organisa-

tions have stated that there is “a reasonable basis to believe that both state and non-state actors have committed crimes against humanity in Mexico.” (Open Society Foundations, 2016). Such crimes include over 150,000 people intentionally killed between 2006 and 2015, a rough estimate of 580,000 total kidnappings in the same period of time, an increase of 600% in reported cases of torture, and at least 26,000 people missing many believed to be as a result of enforced disappearances. (AI, 2014; Hussein, 2015; Open Society Foundations, 2016).

There are almost 40 million children and young people in the country, whom the increasing levels of and violence have affected directly or indirectly. More than 2000 children have been killed between 2006 and 2014. The homicide rate of adolescents has doubled, reaching over 15.8 per every 100,000 inhabitants in the country, although there is no official data on the total number of violent deaths or those related to crimes or extrajudicial killings.

Children as young as 11 are now joining drug cartels across the country (Beckhusen, 2013) and by 2010, drug cartels had successfully recruited between 25,000 and 35,000 children under the age of 18. While children represent a cheap labour force for drug traffickers, they are also used by the cartels in suicide attacks on security forces or in crimes such as murder, kidnapping, and torture due to the constitutional immunity and maximum sentences of three to ten years that children under 18 may receive (Toribio, Solera, & Robles, 2010). Violence against children is not limited to crime-related incidents. Data shows that over 70% of children have experienced discipline-related violence, either in their families or at school; and two-thirds of the children in primary and secondary schools have reported physical aggression (IACHR, 2015; UNICEF, 2014, 2017).

Despite this alarming crisis, Mexico has made significant changes in the domestic legal framework to incorporate the international law of human rights, including all the international treaties and instruments that protect children’s rights (Vázquez, 2013). Both governmental agencies and civil society organisations have developed HRE programmes as a key mechanism to counteract the widespread and escalating violence across the

country. Nowadays, HRE is perceived as a viable strategy to redress past and prevent further human rights violations and abuses (UN, 2013) which is why the current study focuses precisely on the challenges educators face implementing these programmes across the country.

## **Methodology and methods of data collection**

The current qualitative case study examines the professional knowledge and practices of educators implementing HRE programmes in Mexico. The case study presented has phenomenological undertones (Creswell, 2007; Kettley, 2010) since it focuses on educators' lived experiences and narratives to analyse the meanings constructed from their reflective practice in HRE. A total of fifteen educators – nine women and six men – working in three different organisations collaborated in the study, ten of which worked in programmes directed at children and young people. The data from all the participants was considered in this chapter in order to draw relevant comparisons between educators teaching solely children and young people, those only teaching adults, and those that who teach both populations. The organisations and participants represent as comprehensively as possible the field of HRE in Mexico; participants' profiles cover a wide range of professional backgrounds in HRE and contrasting degrees of experience, whereas the organisations include both public-funded and non-governmental entities.

Data was collected for a period of six months through open-ended methods including semi-structured interviews (Kvale & Brinkmann, 2008), participant observations (DeWalt & DeWalt, 2011; Jones & Somekh, 2005), think-aloud tasks (Barnard & Sandberg, 1994; Whitney & Budd, 1996), and document analysis (Kane, Sandretto, & Heath, 2002). The documents included institutional publications such as reports, programme designs and policies, as well as individual teaching materials.



## Making sense of human rights and human rights abuses

Educators teaching children and young people (10/15) – in contrast to those working with adult groups such as judges, civil servants, police or military personnel – had developed a broader understanding of human rights. This broader understanding favoured the underpinning values, moral, and ethical claims of human rights over the legal framework or international instruments. For these educators, focusing exclusively on the legal aspects of human rights offered a limited interpretation of what these rights are and what they can offer to children and young people in their everyday lives. Since for them these rights embodied universal values shared across cultures and basic moral principles, most educators teaching children and young people (9/10) focused on the personal, ethical, and social commitments these rights entail when defining them.

*[After studying the theory of human rights during my professional training] I am convinced that human rights are not law. There are so many other things that human rights are, that are not necessarily limited to the laws or legal instruments (Anna<sup>19</sup>, interview).*

*Human rights are a discourse for your life [...] these rights are a way of life that recognise the value of other people as well as your own worth (Clara, think-aloud task).*

The expression used by Clara to define human rights as a ‘way of life’ was present in the definitions provided by other educators (6/15) as well as in teaching materials and lessons plans. Furthermore, in several of the workshops observed (5/14), educators constantly emphasised the need for children to incorporate rights into their way of life, as guiding principles or some sort of moral compass.

Despite their ‘broad’ definitions of human rights, all educators working with children and young people (10/15)

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<sup>19</sup>Names of the participants have been altered for confidentiality purposes.

recognised the importance of their legal framework—instruments and treaties—for the ultimate protection and promotion of human rights. As they noted, without adequate legal support, the protection of rights, particularly children's rights, cannot be guaranteed as it would depend only on good intentions from governments and institutions.

An important distinction in the way educators made sense of human rights in general and children's rights, in particular, was related to the relationship they assigned to rights and responsibilities. For instance, educators like Silvia and Clara strongly believed that rights are non-meritocratic, human rights must be taught as universal entitlements that everyone is granted independently of the fulfilment of personal or social responsibilities.

*This is what is called a 'toxic' idea, the belief that you have to earn your rights. This is a discourse that is commonly directed to children with the purpose of... 'well, yes you have a right to X but [to earn this right] you have to do Y.' This discourse is usually used by teachers or parents, when they try to emphasise that children do have rights but they also have responsibilities, and they try to make it look as if these rights are a consequence of fulfilling your responsibilities when, in reality, it is not like that (Silvia, think-aloud task).*

Similar to Silvia, educators working with children and young people that explicitly advocated for this non-meritocratic nature of rights (5/10), agreed that the notion that individuals – even more importantly children – had to 'earn their rights' by fulfilling their responsibilities is one of the most widespread misconceptions in Mexico. From a non-meritocratic view, the State and governmental institutions are ultimately responsible for securing everyone's rights. Thus, even though individual commitments towards these rights are necessary, teaching children how to demand their rights are guaranteed from the competent institution becomes essential.

According to several educators (4/10), a meritocratic view of children's rights could be found not only in schools and families but was also promoted through certain HRE programmes around the country. These educators believed that teaching

children that their rights depended on actions such as good behaviour or compliance with the rules commonly associated with an authoritarian approach to education and a traditional pedagogy fairly common in Mexico. For them, a meritocratic understanding of rights exposed that adults were, in fact, more concerned about discipline than actually promoting and protecting children's rights.

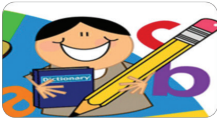
Nevertheless, some educators working with children and young people explicitly advocated for a meritocratic view (4/10) in HRE. For them teaching children that their rights are 'automatic' entitlements independent of any sort of responsibility could lead to misconceptions that would ultimately diminish their personal commitment towards these rights. As Cecilia explained, a non-meritocratic understanding of rights is counterproductive for the actual implementation of human rights.

*...It is complicated to put [human rights] into practice. It is complicated because most people consider human rights as someone else's responsibility not their own. If the State is the one that has to secure your rights, then the State is responsible, right? But they are overlooking the other part... where do you leave your commitment [towards these rights]? (Cecilia, interview).*

For Cecilia, when teaching rights it was important not only to explain the rights one is entitled to – either as an adult or a child –, but also to emphasise the personal and social commitments and responsibilities required for the full enjoyment of human rights. Educators that agreed with Cecilia, such as Linda or Lucas, were not looking to dismiss the role of the State in guaranteeing human rights; however, when implementing their programmes, they preferred to foster a sense of co-responsibility in the promotion and protection of human rights. From their meritocratic understanding of these rights, these educators then favoured co-responsibility by encouraging individuals to have a commitment to know and exercise their own rights and to help to protect the rights of others.

Pairing child rights with specific responsibilities, as shown in the teaching material above, was a common strategy used by educators advocating for a meritocratic understanding of

rights (4/10). Activities establishing such relationships were used with children from pre-school to adolescence in secondary schools. Such activities included songs, storytelling, games and group debates; and in all of them, the importance of good behaviour, compliance with the rules, and fulfilment of one's own responsibilities were deemed a necessary condition for the enjoyment of rights.



**RIGHTS**

Right to education and to have favourable conditions for learning



**RESPONSIBILITIES**

Do your homework  
Be punctual to class  
Work in the classroom  
Respect your teachers and classmates



**RIGHTS**

Right to freely practice your culture and religion.



**RESPONSIBILITIES**

Respect the religious beliefs and ideas of everyone else.



**RIGHTS**

Right to play and participate in cultural life



**RESPONSIBILITIES**

Respect the rules of the games  
Go to museums, cinema and theatre  
Being a 'good loser' when playing



**RIGHTS**

Right to receive legal help in case of committing a crime, and the right to contact your family



**RESPONSIBILITIES**

Behave  
Respect property that is not yours  
Respect all people

(Martinez Sainz, G. 2015)

Regardless of the similarities and differences in the ways educators made sense of rights, most educators (13/15) strongly believed in the importance of HRE given the widespread crisis of violence in the country. For educators working with children and young people in particular, violence and human rights abuses were one of the main challenges they faced in their programmes since these fostered the normalisation of aggressive behaviours by learners and their involvement in human rights violations and

abuses either as witnesses or as victims themselves. For many of the educators (7/10) the reality of human rights in Mexico forced them to confront the scope and limitations of HRE and reflect on the aspirational –even utopian – nature of these rights.

*Well, you realise that human rights... they sound really nice in theory but in practice there is no such thing. In practice, the minimal conditions for a culture of legality and respect towards human rights do not exist [in the country]. For instance, there is a lack of respect amongst them [children and adolescents] and their schoolmates. [If they can't even respect each other] how can there be human rights? It is just utopic! (Lucas, interview)*

For Lucas, the structural limitations for the respect and promotion of human rights were evident in everyday situations for children and young people. Limitations were so pervasive that, for him, these often seemed like an impossible obstacle to overcome for HRE programmes. For Lucas, without minimal conditions for the implementation of human rights, these were nothing more than a utopian endeavour. Similarly, Linda explained how witnessing or being informed by learners of human rights abuses was discouraging for them as educators. As she explained, she saw serious discrepancies between the theory of human rights, their aims and ideals and their actual practice; this was disappointing and often lead educators to question the very notion of human rights and the overall impact of HRE.

*We have found a lot of violence, a lot of abandoned children and they grow up the best they can... You encounter [terrible] things, then young people come to you as an educator, I think because they look up to you, and they ask for help. One day a girl told me: 'I have a problem, I suffered [sexual] abuse, my father raped me'. [...] when you see the reality, when I was confronted with a country that is a mess, full of problems, full of violence, full of shameful situations, you think 'what [else] can we do?' It comes the disappointment, the sadness, the discouragement. 'What is the point of all we do [as educators]?' (Linda, interview).*

For many educators (7/15), the discrepancies between the theory and practice of human rights had led them to question the whole project and purpose of these rights. For those working with vulnerable groups such as children and young people (10/15), the violence in Mexico had forced them to witness how the reality of children's rights fell short of the ideals and minimal standards of human rights. Despite their discouragement and disappointment, such a violent context also provided an opportunity for them. As Eric argued, even if human rights were considered merely an aspiration or a utopian ideal, they could be used as guidelines for educators and learners "to move forward towards that direction" (Eric, think-aloud task). Similarly, for Andrea, even if the whole project of human rights was utopic and in practice the standards unattainable, a lot could be achieved just by pursuing these rights:

*[Through human rights] we can build a society, a healthy, free, plural society. A balanced and horizontal society, in which we all have the same opportunities. And it is something really utopian [...] but what are utopias for if not to keep us walking towards them (Andrea, think-aloud task).*

Thus, even though the violent context poses greater challenges for educators, it also helps them to reflect on issues such as the nature of human rights, their scope and limitations and their role as educators to shorten the gap between their ideals and their practice. Educators then not only face the contextual challenges of a violent society but also use the shortcomings and 'unfinished' implementation of human rights as examples in their sessions, as guidelines for practice and, ultimately, as a motivator for their work.

## **Teaching children about their rights**

Consistent with their broad understandings of human rights, most educators teaching children and young people (7/10) tended to advocate for a transformational aim for the HRE programmes they implemented across the country. In this sense, these educators believed that learning human rights could 'transform' individuals, empower them, foster positive

attitudes and strengthen their commitment towards these rights. Thus, they focused more on the attitudinal aspects of HRE rather than the content of human rights or the instruments that protect them. For example, Sara believed that her main aim as an educator was to enable learners' attitudinal change:

*Rather than they [learners] understanding the concept of human rights, what I want is for them to change their attitudes. [...] It is not that understanding [the theoretical aspects of] human rights is not important, but why would I care if they are able to define [human rights as] a concept if in reality they will not change their attitudes (Sara, interview).*

Similarly to Sara, educators like Andrea and Clara who considered human rights as a way of life and had broad understandings of rights, advocated for the transformative purpose of HRE, which encouraged learners not only to believe in these rights but also to incorporate them in their daily lives. Furthermore, for educators like Anna, Linda and Lucas, the purpose of HRE should go one step further and not only promote behavioural and attitudinal change but foster the development of moral values that change the learners' whole worldview. As Benjamin explained, their commitment as educators was not only for learners to know about their rights but to teach them new ways of coexistence through the values underpinning these rights. By doing so, as Linda explained, they could challenge learners' preconceptions and scepticism towards human rights prompting a cultural change: *"The [ultimate] objective of our programme with children and young people is to change the culture [...] change their assumptions"* (Linda, interview).

Educators (9/15) advocating for a transformative approach to HRE agreed that the process had to be progressive and developed gradually – especially with children and young people – starting with raising awareness and consciousness on the importance of human rights. For educators such as Andrea and Silvia, all teaching practices were meant to be designed to promote such a transformation. They did so by persuading learners of the importance of their rights in their lives and influencing their views, attitudes and behaviours.

For example, Alan focused first on the underpinning values of human rights, as he believed children and young people could easily identify and relate to them:

*The discourse [of human rights] does not have any major theoretical complexity, because it is a discourse so humane that any person even if she cannot describe [the theory] has the capacity to perceive herself as valuable, as unique, as immense and perceive at the same time that everyone else are simultaneously equal (Alan, think-aloud task).*

Despite educators' strong beliefs about the advantages of a transformative approach, several of the educators that advocated for this approach (5/7) recognised how ambitious this aim was, particularly due to the contextual challenges, institutional constraints and other circumstances beyond their reach. For instance, some of the educators were unable to implement a 'transformative pedagogy' due to institutional constraints that included political agendas or ideologies as well as standardised methodological approaches or lack of resources for HRE programmes. Thus, for these educators, achieving the transformation of children and young people was nothing more than 'wishful thinking' – as they argued – given their contextual and institutional circumstances, although they managed to incorporate some elements of the transformative approach such as making the content accessible, practical and relevant.

All educators (15/15) in the study agreed that an essential task of their work was to make the content of human rights accessible to learners and relevant to their needs. For instance, Sara considered it essential to adapt her language according to the learners' profile when working with children and young people, to organise and represent the content of human rights in a way that is relevant for them without simplifying or reducing or losing the full sense of the concept. Similarly, for Andrea, the interpretation of the legal content was an essential aspect of her work as an educator:

*One of the main challenges is to transform all the legal system and the legal framework [of human rights] into everyday aspects but this is our main task as human rights*



*educators, especially when working with children and young people. (Andrea, interview).*

Thus, according to these educators, teaching children about their rights requires first and foremost developing an interpretation of the legal content of these rights that conveys their normative content, their underpinning values and stresses how these are relevant for learners' lives. In particular, educators with a broader understanding of human rights (10/15) supported the idea of adapting the content of these rights in order to make it accessible but also relevant to learners' lives. For example, Anna strongly believes that as an educator she needs to interpret, adapt and modify the content of human rights so it can actually resonate with the reality of children and young people. She provided an example of her interpretation when teaching young people living on the streets:

*And then, what do I do? Here is where I have learned... what I should tell him, so what I tell won't hurt him [...]. If you tell street-kids or the homeless population: 'You have the right to have a family'. [They will reply:] what? Because their family is the 'gang'. Then you need to learn to explain to them: 'The right to have a family is to have someone to look after you, that cares about you... you can call it dad, grandmother, aunt, brother... or your gang' And then the whole discourse [of human rights] changes" (Anna, interview).*

For her what was valuable was not the discourse of human rights itself but its underpinning values and the capacity to empower individuals. Anna and the other educators that shared experiences of interpreting and adapting the content of human rights, agreed that the goal was to make it even more relevant for the challenges that learners faced. They agreed that such an interpretative process was achievable through experience as it was not based on general formulation, nor did it imply a homogenous process, or a recipe to follow.

All educators teaching children and young people (10/15) also emphasised the importance of developing skills through strategies and experiences so learners can put into practice *"the values of human rights such as tolerance, respect [...]* rather

*than the theory*” (Linda, interview). For them, the practical approach of HRE means educators should focus on demonstrating how to implement human rights standards, values and guidelines in real-life situations:

*We are not that interested that [learners] leave with an idea like a perfect theory leading to a dictionary definition of what human rights are, because more than the theory what we are interested is in their practice. [What we are interested in is] that each learner [practice human rights] in their general attitudes, in their attitudes with their peers* (Lucas, interview)

This practical purpose established by Lucas was consistent with the way he taught during a workshop to primary school children. In his session, he never gave a definition of what human rights were, and instead he provided several examples of how these rights were present in children’s everyday lives and strategies to identify if these rights are being violated. Similarly to Lucas, the rest of the educators (9/10) strongly believed that while teaching children and young people about their rights it was necessary to favour practice over theory, thus the focus of HRE programmes was – or should be – on developing skills to exercise these rights and the attitudes to promote and defend them.

## **Strategies for teaching in a violent context**

For educators, identifying learners’ needs, perceptions and lived experiences related to their rights is a key strategy when teaching children in a violent context such as Mexico because these can be incorporated into the content. Several educators (7/10) explained that they consistently profiled the groups that they taught in advance, and as a result of their experience doing so, they could identify particular needs and experiences, and design the content of the workshops, the strategies they would implement and the discussions they would raise accordingly. By doing so, the learners’ experiences became an integral part of HRE, guiding the overall teaching practices of educators. For instance, Cecilia explained how she

and her team usually designed the content and activities of the workshops according to each group and Lucas also argued that basic concepts worked differently depending on learners' particular circumstances, even if these are particularly violent:

*It depends a lot [on what young people are interested in] but also [in their context] because in small communities a constant problem are the deeply-rooted practices and customs [against human rights] that young people learn, then it is very difficult to make them understand what the rule of law means and all that. Because for them, many times the rules are made by their own community, like lynching someone for stealing something. [...] So, we try to teach them [what human rights and how to respect them]"* (Lucas, interview).

As Lucas explained, they did not ignore learners' reality or the circumstances they face; on the contrary, they used them to show the importance and urgency of human rights. Even though many of the educators (7/10) had institutional protocols to identify key elements in advance to plan each programme and activity, they recognised that the process of incorporating learners' experiences and narratives into the content of the sessions had to be done in the moment. For instance, according to Andrea, they could only discover the real interests and needs of the group once they were already teaching, most of the time by observing their reactions and behaviours and listening not only to what they said but how they were saying it. For her, it was important to "listen how they listen to you", see their reactions and their expressions as this was what gave educators an idea of what they wanted and needed. This was especially important when she was teaching sensitive topics to young people, like sexual abuse or physical violence, because their reactions let her know if there were any deeper problems in the group or if any of the participants may have suffered violence or abuse.

For educators like Lucas, Julian and Cecilia, thoughtful consideration of learners' experiences helped them to gain a better understanding of how to address a group, how to explain certain concepts and how to level the content of the session

according to learners' background and needs. Furthermore, by reflecting on their practices many educators (7/15) learnt to be more perceptive while teaching and to adapt or improve their actions taking into account learners' responses and reactions. According to Benjamin, the sensibility they needed as educators to give each group what the learners needed, depended heavily on their capacity to reflect on what they were teaching 'while they are teaching it.' He described this sort of reflection-in-action while working with young people:

*You need to be very sensible about what the group is asking. Suddenly your purpose/objective is this... for instance discuss the topic of gender equality but you start to look at the group and how the kids, in addition to gender equality, have other needs. [You realise] there is a conflict that you can tackle in one way or another, you can open an alternative topic and from there you can teach about conflict, about cooperation, and all that. But is the group the one asking for it? You can have an elaborate plan, thinking about using certain strategies and techniques at certain times, but the reality is proposed by the group. You have to be sensible about what they are demanding because you cannot rigidly, orthodoxically [follow your plan without reflecting on it. You have to think:] Ok no, wait... I have to ignore this part, we have to talk about this... (Benjamin, interview).*

According to Benjamin, by being reflective he had learned to identify learners' needs and reshape their plan and objectives according to them. Like him, some educators (8/15) agreed that reflection-in-action was an essential skill in HRE programmes considering the limited time they have to work with each group and the little they get to know about them in advance. For this reason, it seems that constant reflection and deliberation while they are teaching helps educators to establish relevant but realistic objectives and adequate learning outcomes according to learners' needs.

## Discussion

The findings of the study suggest that educators' narratives and lived experiences are a significant source of knowledge in HRE, in keeping with previous research (Abraham Magendzo, Dueñas, Flowers, & Jordan, 2015; Osler, 2016). In particular, by focusing on educators' narratives of the judgements they make in order to teach human rights, the current study makes it possible firstly to identify the sorts of deliberative processes they perform. It is clear that educators' judgements encompassed both subject-matter and pedagogical content related to human rights and that these judgements were performed in a cyclical way – before, during and after teaching activities – which corroborates that they are reflective practitioners, following Schön's (1983) distinctions of reflection-in-action and reflection-on-action. Furthermore, the findings of the study show that educators' judgements either in-action or on-action, constantly inform their professional practice. From interpreting and adapting human rights to making rights more relevant for learners', and to fostering in them practical skills to protect these rights, educators' judgements proved to be action-driven. Reflection was, in fact, leading human rights educators to concrete teaching and professional practices. However, from educators' narratives and the observations conducted, it seems both judgements and practices are highly contextual, i.e. strongly determined by the circumstances in which they are performed. These findings provide further systematic empirical evidence to theoretical claims regarding the impact of the context for HRE (Tibbitts, 2017; Zembylas, 2014).

In Mexico, children and young people are immersed in a context that constantly demonstrates how flawed the implementation of human rights is and how far from basic human rights standards the country finds itself. In a society highly affected by violence and where human rights abuses are so common, the reality around children and young people increases the complexity and challenges of teaching them about their rights. As the findings of the study show, the context not only provides children and young people with numerous counterexamples

of the protection of human rights as well as their principles of tolerance, equality and justice. A violent context also it makes it difficult, if not impossible, for educators to promote experiential learning in their HRE programmes. Experiential learning in HRE (Bajaj et al., 2016; Abraham Magendzo, 2008; Mujica, 2007) is commonly considered to be the most adequate way in which educators can teach human rights, as it allows learners to experience first-hand the importance of these rights or the advantages that their respect, promotion and protection can have. Nevertheless, the findings suggest that many educators 'flip' the sense in which experiential learning is understood in HRE by also incorporating learners' experiences of the absence of rights, their abuses or violations.

Even though the context in which they teach poses serious limitations for educators, the findings suggest that it also provides them with unique opportunities to develop a critical pedagogy for teaching human rights. Teaching in a violent context forces educators to realise that human rights are far from a reality, and to acknowledge the wide gap between the promises or aspirations of these rights and their actual implementation. This discrepancy allows educators to question the purpose of human rights, challenge their underlying assumptions and confront their limitations. It is precisely due to their reflective practice within a violent context that educators have the opportunity to reflect on issues such as the ultimate purpose of these rights, their relationship with moral and social responsibilities, who is responsible for their protection and promotion, and so on. By doing so, not only do they make sense of human rights, but they also develop a grass-roots critical pedagogy for HRE which accepts the limitations of human rights (Keet, 2012, 2017; Zembylas, Charalambous, Charalambous, & Lesta, 2016) embraces their complexity (Rendel, 1992) and emphasises their 'liberatory' possibilities (Bajaj, 2015; Freire, 2005; Tsolakis, 2013).

By making human rights accessible to children and young people—regardless of the contextual limitations and challenges—educators are empowering them to identify and stand against violations and abuses of these rights. At the same time, by favouring a practical approach over a theoretical one, edu-

cators are fostering the development of the practical skills that children and young people need to protect their rights. These two strategies—making rights accessible and focusing on the practical skills to promote and protect them—demonstrate that reflective practice in HRE can lead to the development of a practical wisdom. The findings of the study show how educators' practical wisdom functions as an organizational structure that brings together their knowledge, experiences and judgements. It is thanks to their practical wisdom that they are able to develop a radical framework for HRE.

This radical framework demonstrates the importance of pedagogical content knowledge (Brown & McIntyre, 1993; Shulman, 1986) in this field as a necessary condition to effectively teach children and young people about their rights. As the findings of the study show, educators in a violent context must adapt the content of human rights education to make it relevant for learners without downplaying their complexity or denying the reality they face. A common strategy for doing so is through the incorporation of narratives of violence and human rights abuses into HRE programmes as a way to disrupt the cycle of violence and challenge learners' assumptions about the relevance and significance of these rights in their lives. This pedagogical strategy requires an awareness of learners' interests, needs (Loewenberg Ball, Thames, & Phelps, 2008) and familiarity with their context (Shulman, 1986). Due to this particular knowledge that they develop, educators in Mexico manage to transform the 'oppressive' context of learners by using it as a mechanism of their liberation (Freire, 2005). In this sense, in the implementation of HRE programmes, educators follow a liberatory and radical framework, rather than a declarationalist one (Keet, 2015), i.e. one that focuses on the superficial knowledge of the history and key documents of human rights.

Working in a violent context poses significant challenges for educators teaching children and young people about their rights; however, it also offers an opportunity for them to transform HRE into a more critical, radical and liberatory endeavour. Through their reflective practice, human rights educators work-

ing in these circumstances are capable of developing a critical and radical pedagogy that is centred on learners' needs, that acknowledges their reality and uses it to empower them, so that they may become agents of cultural change. Thus, the study not only provides important insights to understand the impact of the context for educators' knowledge and practices in implementing HRE programmes, but also demonstrates the importance of lived experiences as a source of knowledge that can inform the implementation of these programmes.



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## Chapter 5

# Tokenisation of children's right to safe and protected environments–Indian teachers' perspectives on school corporal punishment

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### Abstract

Despite constitutional provisions, acts and policies pertaining to children's right to protection from all forms of violence in schools, corporal punishment (CP) is still extensively used across Indian schools. This paper identifies teachers' perspectives on childhood and children's rights to safe and protected school environments and their influence on teachers' disciplinary practices. Data were collected from four case study schools in Hyderabad, India through school and classroom observations, focus group discussions and interviews. Findings show teachers lack clarity regarding acts that constitute CP. It was found that they have some basic knowledge of children's rights though they fail to critically engage with its aspects. This paper highlights the tokenistic practice of children's right to protection from CP in the sample schools while emphasising the need for bodies such as the Kendriya Vidyalaya Sangathans (KVS) and teachers to critically engage with children's rights for its effective implementation in Indian schools.

## Introduction

*Children do not lose their human rights by virtue of passing through the school gates ... Education must be provided in a way that respects the inherent dignity of the child... that respects the strict limits on discipline... and promotes nonviolence in school.* UN Committee on the Rights of the Child (General Comment 1, 2001, p.3)

Schools are social institutions that impart knowledge and skills to children in a bid to assist them to participate in the real world. Among its many functions as highlighted by Dewey (1900), schools also perform the function of developing an environment through which social reform can and should take place. However, schools need to ensure the children's right to safe and protected school environments.

Teachers, the lynchpins of any educational system, are the medium through whom schools are able to perform and achieve their varied functions. Other than adults within the family, teachers are probably the next most frequently encountered adults in a child's life and plausible role models for students (Howard, Dryden, & Johnson, 1999). To structure the learning and behaviour of students, teachers adopt various positive or negative disciplinary practices. This paper aims to explore teachers' understanding of childhood and children's right to safe and protected school environments and the influence of these on the disciplinary practices they adopt to discipline students. The paper opens with a discussion on the concept of disciplinary practices within the Indian backdrop and its cultural ethos with regard to children and the adult-child relationship. Drawing on analysis of the findings it concludes by emphasising the need for bodies such as the Kendriya Vidyalaya Sanghatans (KVS) and teachers to critically engage with children's rights for its effective implementation in Indian schools.<sup>20</sup>

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<sup>20</sup> KVS is the Central School Organization which oversees the functioning of schools within its jurisdiction.



## Disciplinary practices

The use of positive disciplinary practices enables children to be responsible, respectful and resourceful members of their community (Alfred, 1928). Disciplining under this model does not involve any kind of violence or punishment rather it enhances children's holistic development (Durrant, 2010). As can be seen in table 1, these practices recognise the child as an individual and promote the development of self-discipline in children. However, negative disciplinary practices, such as corporal punishment (CP) often involve forms of physical and/or psychological violence. These acts of violence, also referred to as child maltreatment or child abuse, comprise of physical abuse; emotional and psychological abuse; sexual abuse; and neglect (WHO, 1999). Acts of physical abuse of a child have been defined as the "intentional use of physical forces against a child that results in – or has a high likelihood of resulting in – harm for the child's health, survival, development or dignity" (WHO, 2006, p.10). This abuse includes actions such as hitting, beating, kicking, shaking, biting, strangling, scalding, burning, poisoning and suffocating children. Defining emotional and psychological abuse, the World Health Organisation lists acts such as restriction of movement, belittling, blaming, threatening, frightening, discriminating against or ridiculing; and other non-physical forms of rejection or hostile treatment. It goes on to state that these acts can cause damage to the children's physical or mental health, or their physical, mental, spiritual, moral or social development (WHO, 2006).

Within the Indian context, The National Commission for Protection of Child Rights (NCPCR, 2007), India identifies CP to involve acts that lead to insult, humiliation, mental and physical injury among children. This definition of CP is in tune with India's Right To Education (RTE) Act of 2009, under which CP is classified as acts of physical punishment, mental harassment and discrimination employed against a child. Hence, the use of acts listed under child maltreatment or child abuse by the WHO are regarded as acts of CP within India.

**Table 1 - Differences between positive disciplinary practices and negative disciplinary practices**

<b>Positive disciplinary practices</b>	<b>Negative disciplinary practices (CP)</b>
Does not include any form of violence (physical nor emotional through humiliation)	Involves physical or/and psychological forms of violence
Questions the actions, not the person	Questions the person's dignity, not their action
Offers an alternative behaviour which is positive	Does not offer an alternative behaviour
Always consists of an action related to the wrong behaviour and proportional to it, to produce positive learning in the child	Is not related to the wrong action and is neither proportional to it. It produces fear and the obligation to obey, not learning
Is not imposed with authority	Is based on abuse of power
Is always thought out and planned	Is faster, easier and does not require time to plan and think
Involves children's participation as much as possible, and they at least are informed of the norms and consequences	Never includes children's participation
Includes non-violent forms of punishment	Teaches children that people who love them hurt them (link between love and violence) and people who have authority can abuse it (link between authority and violence)

(Ramsden & Buvanewari, 2008, p.15 Appendix 1)

## **Corporal punishment in India**

In 1992, India acceded to the UN Convention on the Rights of the Child (CRC, 2012). By doing so India is committed to protecting and ensuring children's rights (CRC, 2012) and has agreed to hold itself accountable for this commitment before the international community (CRC, 2012). Therefore, children of India are to be protected from all forms of physical and

mental violence (Article 19 of CRC) and torture and other cruel or degrading punishment or treatment (Article 37 of CRC). On par with this, India needs to ensure that disciplining in schools is practiced considering children's human dignity and in conformity with the present Convention (CRC, 2012).

In 2000, the Supreme Court of India banned the use of CP to discipline children in schools (NCPCR, 2008). Various Constitutional Provisions and Acts have been laid down to protect the rights of children thereby ensuring their education and protection against CP in schools (See Sawhney, 2015a). In March 2007, the NCPCR was set up in India under the Commission for Protection of Child Rights Act, 2005, an Act of Parliament (December 2005). The mandate of the NCPCR is to ensure that all Laws, Policies, Programmes, and Administrative Mechanisms are in consonance with the Child Rights perspective as enshrined in the Constitution of India and also the UNCRC (NCPCR, 2007).

Guidelines related to the relevant acts and policies are regularly communicated to schools through government notifications. Schools, in turn, send out circulars to their respective teachers informing them of the rules and regulations to be followed in disciplining students. The National Council for Teacher Training (NCTE) has made it mandatory for teacher training programs to include relevant courses so that teachers are aware of child rights and adopt positive practices to maintain discipline in their classrooms. However, changes in the teacher training curriculum are often not immediate and take a few years to be implemented (Sawhney, 2015b). This delayed implementation eventually does reach pre-service teacher trainees. For in-service teachers, courses to develop their skills according to contemporary norms are sporadic and in many instances superficial (Prakash, 2017).

It is, therefore, not surprising that the Young Lives longitudinal study, which followed two cohorts of children in Ethiopia, India (the states of Andhra Pradesh and Telangana), Peru and Vietnam over 15 years, found that in India 93% of 8 year-olds and 68% of 15 year-olds reported being physically punished by a teacher within the past week (from when the data was being

collected) and 78% of 8 year-olds and 34% of 15 year-olds reported having seen other children being physically punished (Ogando & Pells, 2015). Other empirical research highlights the practice of various types and degrees of CP by teachers across Indian schools (See Cheruvalath, & Tripathi, 2015; Deb, Kumar, Holden & Rowe, 2017; NCPCR, 2012; Sawhney, 2011). Moreover, atrocious acts of CP committed by teachers in Indian schools are being reported in numerous news media.<sup>21</sup> Use of CP in India can be ascribed to the public's attitude towards children, which is prejudiced by cultural and religious norms (NCPCR, 2008). These norms consider children not to have a voice and as the sole responsibility of their caregivers. Due to this attitude, adults resort to corporal punishment (Raj, 2011) in the "best interest" of the child.

## **Indian ethos and the use of corporal punishment**

In 1988, in its national seminar on child abuse in India, the National Institution of Public Cooperation and Child Development NIPCCD (as cited in Segal, 1995) reported that at the cultural level CP was sanctioned in India. Culturally, parents continue to consider CP as a necessary tool for disciplining children and have no inhibitions in acknowledging their use of CP (Saath Charitable Trust, 2006; Kacker, et.al., 2007). The NCPCR (2008), in its summary report by the working group on CP, counters some common beliefs used by adults in an attempt to support CP. One of these justifications specifically states "corporal punishment is a part of my culture and child-rearing tradition" (NCPCR, 2008, p. 10). Though the reasons for resorting to CP may vary between parents and teachers, both vouch for the

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<sup>21</sup> Indian Express - MP: No curbs on corporal punishment in schools (<https://timesofindia.indiatimes.com/city/bhopal/mp-no-curbs-on-corporal-punishment-in-schools/articleshow/58320911.cms>); NDTV ([www.ndtv.com](http://www.ndtv.com)) - Delhi government orders private schools to take disciplinary action in corporal punishment cases (<https://www.ndtv.com/education/delhi-government-orders-private-school-to-take-disciplinary-action-in-corporal-punishment-case-1694545>).

perceived benefits of CP in ensuring children behave according to the requirements of adults.

Indian culture is characterised by its diversity and plurality (Raman, 2000). But like any other society and culture, adults' attitudes towards and perceptions of children influence children's position in society. This inevitably affects how children are treated within Indian society (Deb & Mathews, 2012). In India, children are expected to abide by the norms laid down by adults in the family (Bisht, 2008). Children play the role of subordinates who are dominated by adults around them. This control of adults over children continues even in schools (NCPCR, 2012). Hence, the behaviour of teachers is consistent with that of parents at home, an authoritative adult with a submissive child.

Lombardo and Polonka (2005) describe this adult-child relationship as the colonial perspective towards children. Discussing the influence of the colonial perspective on CP, they signify the relationship between adults and children and the effects of this relationship in both structural and personal terms. According to them, this relationship is "one of unequal power comprised of dominance/subservience" (Lombardo & Polonka, 2005, p.195). Here, members of the lesser powerful group (children) are denied the full status of a member of the human family. As a result, "children's authenticity is denied and they are forced to adopt an identity defined for them by the dominant power, the adults" (Lombardo & Polonka, 2005, p.195). Similarly, in the Indian cultural context children are considered to be subordinate and submissive to adults. The dynamics of these cultural norms and practices are implicitly and explicitly conveyed to children. Hence, instructions from adults are expected to be blindly followed without questioning. Teachers are to be revered and not to be questioned either (Ganapathy-Coleman, 2014). These cultural practices influence the perception and practice of children's rights and have a bearing on the way children are disciplined.

**Table 2 - Differences between the colonial and Child Rights perspectives on child/adult relationships with respect to CP of children**

<b>Colonial perspective</b>	<b>Child Rights Perspective</b>
Child/adult relationships are built on inequality and adult dominance	Child/adult relationships are built on mutual respect and value
Children do not have a voice	Children's voice matters
Short-term control of child is central	Long-term child development is central
Children have no right to physical integrity	Children have a right to physical integrity
Children's human dignity may be degraded for "their own good"	Children have a right not to have their human dignity degraded
Corporal punishment is not violence	Corporal punishment is violence
Harm to children is almost exclusively defined in physical terms	Harm to children extends beyond physical to subjective experience of harmful acts
The State has a responsibility to protect children from 'abusive violence' and to protect caregivers' right to use force to 'discipline' children	The State has a responsibility to protect children from violence
Unequal power relationships between groups are reflected in Law	Research and knowledge informs the Law

(Lombardo & Polonka, 2005, p. 190 Table 2)

It is within this backdrop that the present paper addresses the research question - how do Indian teachers' understandings of childhood and children's rights influence their disciplinary practices in light of children's right to safe and protected school environments.

## **Brief overview of the research process**

The population of this study was Kendriya Vidyalayas (KVs) in the city of Hyderabad, India. Using purposive sam-

pling, four case study schools were identified.<sup>22</sup> Two schools which professed to achieve discipline without the use of CP and two schools that had received complaints of CP directed to the KVS, Hyderabad. The headteachers of these four schools were requested to nominate a fifth grade that had at least one student whom teachers perceived to be difficult to cope with in maintaining discipline in the class. It was felt that having a perceived problematic student in the class would allow the researcher to observe the disciplinary practices that various teachers used while coping with this student.

## Methods of data collection

This paper reports data collected through school and classroom observations, focus group discussions (FGDs) and semi-structured interviews. In school s, observations of teachers' interactions with students during assembly hours and other free hours were undertaken. For classroom observations, curricular and co-curricular teachers teaching the sample classes were observed. Non-participant observations of 20 hours were conducted in each school. The sample teachers for these two data tools consisted of 20 teachers, five teachers each from the four schools.

This was followed by FGDs, which comprised of a 30-40 minute session in each school with the teachers who were teaching the sample classes. Like the classroom observation, the teacher sample for this tool also included teachers teaching Math, Environmental Studies (EVS), Hindi, English and a co-curricular activity - singing teacher or physical education (PE) teacher. The sample for this tool comprised of the same 20 teachers that formed the sample for the classroom observations.

Further, 30-minute face-to-face semi-structured interviews with class-teachers of each sample class, one subject teacher and headteachers of each school were conducted. The teacher sample set for in-depth interviews thus comprised of

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<sup>22</sup> KVs are Central government schools set up across India.

eight teachers, two teachers from each of the four schools. The headteacher sample set comprised four headteachers, one from each of the four schools. Drawing on the classroom observations it was ensured that of the two teachers selected for the interview from each school, one was found to often resort to some form of CP and the other was found to not use or rarely use CP. The sample distribution across the data tools is represented in Table 2.

**Table 3 - Sample distribution of the study**

S. No.	Sample category	Data collection tool	Sample size from all four schools
1	Teachers	Observations & Focus Group Discussions	(5 X 4) 20
2	Teachers	Semi-structured interviews	(2 X 4) 8
3	Headteachers	Semi-structured interviews	(1 X 4) 4

## Data analysis

After having sought respondents' permission, all FGDs and interviews were audio-recorded and transcribed to ensure accurate information was retained. Data analysis was carried out using an inductive approach (Robson, 2002). This included familiarization and immersion in the data-set, open coding which primarily involved giving descriptive codes, and a low level of abstraction to flag the emerging themes in the data. This was followed by the second round of deliberation with the relevant data to cluster various codes into different themes. The final step entailed collapsing the overall analysis around a few core ideas and an analysis of the interrelationships between them.



## Trustworthiness

To establish the trustworthiness of the study, Lincoln and Guba's (1985) construct of trustworthiness was adhered to. A true picture of the phenomenon under scrutiny has been presented in this paper through the use of multiple data sources along with opportunities for scrutiny of the study by colleagues, peers, and academicians, thereby addressing the creditability criterion. To allow transferability, substantial descriptions of empirical evidence and sufficient detail of the context of the fieldwork has been presented. To meet the dependability and confirmability criteria, an audit trail was maintained and quotes have been used while discussing the findings.

## Knowledge of children's rights

Data from the FGDs showed that the sample respondents in this study have a limited awareness of children's rights. One of the most common children's rights listed was the RTE. This awareness was based on the RTE Act of 2009. The Act (2009) makes education a fundamental right for all children between the ages of 6-14 years. This means that education for children is free and compulsory and every private school has to reserve 25% of its seats for students coming from below the poverty line (BPL)/economically weaker sections of society, children with disabilities and those belonging to the Scheduled Caste and Scheduled Tribe categories. The fee for these students is reimbursed by the state as part of a public-private partnership. The sample schools in this study are government schools which earlier catered to children of central government employees in transferable jobs. After the introduction of the RTE Act (2009) these schools incorporated the 25% reservation policy. Discussing this change in the schools' admission policy, a headteacher stated:

*After the RTE Act, our admission rules have changed. Now we accept admissions from private workers' children also. 25% of seats are given as per the reservation and under the RTE, we follow the chit system (lucky draw). We*

*have to provide textbooks, notebooks, uniform and shoes to these 25% children. RTE is basically for children from lower income groups. (Headteacher, School 1).*

The entire sample discussed modalities of this right and emphasized their respective schools adhering to this right. Teachers also mentioned children's right to equality and receiving the basic care and support they require to develop. Further, all the teachers were aware of children's rights to protection and safe school environments. However, further probing during the FGDs with teachers revealed that their understanding of this right translated to the presence of boundary walls around the school compound and the existence of a security guard. These provisions meant that no unauthorised person could enter the school and hence students were safe in the schools. Besides, some teachers mentioned changes made to the schools' infrastructure such as the extension of first-floor corridor parapet walls or placement of metal grills to ensure students would not trip over. While teachers did mention the ban on using CP in schools, they did not identify it to be a part of the children's right to safe and protected school environments.

Data from interviews with headteachers of all four case study schools showed them to be more aware of children's rights. Other than the rights listed by the teachers, a listing of rights by the headteachers included children's right to play and the right to survival and development. Headteachers also emphasised on the right of the child to protection, safety, and security.

## **Headteachers outlook on CP**

Findings from interviews with headteachers demonstrated that they were aware of the ban on using CP for children and even appreciated it being enforced. Reporting incidents of teachers still resorting to CP, one headteacher stated:

*We have this rule of no CP. The teacher tries her best to control her emotions. But, off and on I get complaints of the teacher having hit a child. The parents come with complaints, very few but they do come. What to do? I tell*

*them about the weakness of the child, I refer to all the mistakes the child makes then I counsel them saying that this is for the good of your child only, because the child did not do his/her work. Teachers have their own reasons, so I can protect my teachers because I know the teachers very well but of course, there are some teachers who do beat, see I know which teachers really work and which don't. So, accordingly, I handle the situation. (Headteacher, School 2).*

Headteachers reported receiving circulars from the KVS, forwarding the same to their teachers and repeatedly counselling teachers to refrain from using CP. However, findings pertaining to teachers' understanding of the term corporal punishment were found to be quite vague and problematic. In spite of headteachers stating that teachers were asked to refrain from slapping students as it implied the use of CP, teachers did not believe slapping children, beating them with a scale and other similar 'mild' punishments were part of CP. Some of the participant teachers and headteachers stated that children of the present generation were more sensitive compared to previous generations. In fact, the headteacher of School 1 reported an incident when a student had gone up to the terrace and threatened to jump off since he was disturbed by the fact that a teacher had reprimanded him in front of the entire class. Teachers and headteachers from the other case study schools also stated that they were apprehensive that certain students could be overly sensitive and harm themselves if they were reprimanded or beaten. Elaborating on this aspect, the headteacher of School 4 stated:

*The teacher has to handle these children. That is it. Either the teachers do it by instilling some fear or through some threats. But nowadays, we are scared to do even that. What if some child does something to himself/herself? Children from V and VI grades are becoming sensitive. You never know how they will react to something the teachers say or do. If they feel insulted they might do something to harm themselves. So, we are refraining from taking stern actions. This is just leading to the increase in unruliness among certain students. (Headteacher, School 4).*

Hence, it was rather the fear of an extreme step that made some teachers refrain from using CP to discipline students. Additionally, headteachers were apprehensive about these punishments resulting in allegations of discrimination against students from certain backgrounds. Headteachers did acknowledge that according to law, even embarrassing the child verbally, asking them to step out of the classroom, making them sit on the floor etc. did qualify as CP. However, findings revealed that though some of the participants felt that children of the present generation were more sensitive than previous generations and were also conscious of acts that qualify as CP, CP was still being followed in all four schools. Headteachers of all four schools stated that there were times when teachers did resort to slapping children due to reasons such as non-compliance with school rules, incomplete work, or unruly behaviour.

## **Teachers' outlook on CP**

Teachers on their part were found to classify CP as harsh and mild. Hence, acts that they perceived to be physically more hurtful were harsh CP and the slaps or beating that they resorted to were not CP or were just a mild form of CP or rather just mild punishment. In this respect, a teacher stated that “a slap is not that we are bashing up the child, we are sensitive to the fact that we can't hit too hard” (Class teacher, School 3).

When asked to describe various acts that CP comprised of, only one teacher stated “calling a child in front of the entire class and verbally embarrassing him/her or emotionally harassing the child, is also CP” (EVS Teacher, School 2, FGD). Apart from her, all the other teachers defined CP to be those acts that only involved harsh beatings which could cause severe injury to children. In fact, teachers, who used words like “buddhu” (duffer) and “gadha” (donkey) to address students, believed that the use of these derogatory words did not affect students in any manner. The sample grades of this study had a child or two with learning disabilities and Intellectual and Developmental Disabilities. Data from the initial interactions with the teachers showed them to be sympathetic towards these students

and their needs. However, findings from observations revealed that teachers either resorted to CP in disciplining these students or completely ignored their presence in the classrooms.

The class teacher of School 3 was found to be a very strict teacher. During the initial introduction regarding the present research, the teacher had declared that she believes in slapping children to ensure they are well behaved and keep their work up to date. She had stated that she is very strict with her own children and regularly beats them at home too. During observations, she was found to repeatedly slap children for not completing their work or not understanding the concepts she had taught them. Nevertheless, according to her accounts, she had never used CP. She described her acts as 'but just a light slap on the back'. The sound of which often made the researcher look up from her note-taking during the observation. The class teacher did describe herself as a strict teacher who did not shun from slapping students when needed and believed her class to be the most disciplined in the primary wing.

Findings revealed all teachers to believe these forms of 'mild' CP or punishment did not have a bearing on students' psychology or deny students their right to safe and protected school environments. Teachers stated that "beating should not be too much or so severe that it affects the mental makeup of the child" (Class teacher, School B). As long as this condition was met, teachers had no issues with slapping the children or using other forms of 'mild CP'/punishments.

## **Conciliating after the use of CP**

Teachers were found to have developed mechanisms to win over the children after having used some form of CP on them. Discussing this, a class teacher stated:

*After scolding, before they go home I just pat them and tell them 'see it is for your good otherwise people will say so and so's son/daughter is bad, this will bring a bad name to your family.' Then they forget the beating they received and also don't keep it in their mind. (Class teacher, School 4).*

Teachers also elaborated on students' perceptions of a strict teacher to be based on whether or not the teachers had time to pacify students following a punishment or reprimand. Explaining this, a teacher stated:

*As a class teacher when we scream or hit them we make up for it. Later when we get time with them we also pamper them, so we make up for the sternness but when we go in for only one period we don't get time to pacify them. Hence, they feel we are strict teachers. (English teacher, School 4).*

Headteachers stated that there were instances when students complained to their parents about being beaten in school. This resulted in some parents approaching them with grievances against the said teachers. All the headteachers stated that most of these cases were dealt with in school itself by them or if it did escalate it was only up to the Principal. Mostly, parents were counselled to understand the reasons why a teacher had to resort to such measures in the first place.

All the headteachers stated that as children they themselves had been beaten and slapped by their teachers and parents. None of the headteachers felt that these beatings had any negative effect on their personality or psychological development. In fact, it was reported that some parents approached teachers and headteachers asking them to use CP if required to ensure their children were well disciplined. Responding to how students reacted to these parental sanctions of CP, headteachers perceived students to not be affected by them in any way. Teachers stated that parents usually approached them and gave them permission to beat their children if and when needed. Responding to students' reactions to this sanction, teachers stated that there were a few children who were sensitive and would be affected by the indifference of their parents. In fact, teachers found that these were some of the children who would then never complain to their parents when they were actually beaten in school.

Since teachers admitted using what they termed mild CP or punishment they were asked if they were not apprehensive about the consequences of resorting to CP in spite of a ban.

Explaining their awareness of rules on CP and yet its usage in schools a teacher stated:

*Teachers do know the rules and consequence of using CP but still, at times, the situation is just such that we can't help it. Also, there are ways one does not leave any proof. So, a slap on the back is better than calling a child in front of the class and ridiculing him/her. The language used can be harsh and harm the psychology of the child but the slap is then much better. It does not leave a mark too. (EVS Teacher, School 2).*

All teachers were found to be conscious of taking precautions not to beat any child very hard or on a body part that would leave a mark. Hence, students' backs were the preferred part to hit.

*We do hit students sometimes but we make sure it is a slap on the back and not the face so that there is no mark left behind, or we will pull their ears. Sensitive parts are completely avoided. (English teacher, School 3).*

A few teachers stated that they ensured they did not hit children from the first and second grades.

*For the first and second grades we tie our hands. I don't touch these children at all. Only when they come to the fourth and fifth grades when we see that the child can withstand some beating, even if we give one slap the child can withstand... thinking all this only we will hit a child. (Class teacher, School 1).*

Accepting the presence of canes in schools, teachers stated that officially the cane was kept as a pointer but it was often banged on the table to get students' attention. Some teachers stated that the PE teachers did move around with a cane, however, they refused to accept that the cane was used to hit children even though this was found during observations.

*Now we are not supposed to carry a stick or cane the child, but somehow teachers are managing to get away with moving around the school with a cane in their hand. We have it in some classes too but no teacher uses it at*

*all. It is only shown to create fear among children.* (English teacher, School 3).

Findings from FGDs and interviews with teachers showed them to be confident that students who were subjected to CP rarely complained to their parents. Elaborating on this a teacher said:

*Mostly these little ones will not even go home and tell their parents if a teacher has hit them, especially students who are weak in their studies. Students know if they go home and tell their parents, the parents will blame the students only. Parents tell students 'you don't study well, you don't get good marks or you must have done something wrong so that's why the teacher must have hit you. It is good that the teacher hit you.'* (PE teacher, School 3, FGD).

## **Lack of support and awareness of positive disciplinary practices**

The respondents of this study did acknowledge to the use of punishment to discipline students even though they do not recognise these to necessarily be CP (even though policy documents classified these to be acts of CP) and hence a violation of children's right to safe and protected school environments. At some levels, the respondents did express their desire to refrain from using these practices. However, the lack of support and training in positive disciplinary practices resulted in them resorting to CP. Headteachers expressed their helplessness under the present system where they were not able to maintain discipline and were faced with certain indifferent parents and students who would constantly disregard the rules laid down by their schools. Discussing the difficulty in maintaining discipline and its present status in their school, a headteacher explained:

*The problem is that there are 40-45 students in each class and one teacher. In each class, there are 6-7 students who do not perform. All the teachers can do is, send them here to my office again and again. Then I ask them to sit here or*



*sit down on the floor in the class and complete their work. But nowadays even making them sit down is not allowed. Just a few days back this happened people came and said because the child is from a specific caste he/she has been made to sit down on the floor. (Headteacher, School 1).*

*Some parents don't come even after many notices have been sent to them. You can see the diaries of certain students and see how many times the teachers have written in them, I have written and signed also. Some parents don't even bother to call back when we call them regarding their child. Parents also keep their phones switched off. (Headteacher, School 2).*

While headteachers reported receiving circulars from the KVS regarding the ban of CP, they stated that there was no guidance on what practices they were to adopt instead. Discussing this, a headteacher stated:

*The officials at KVS don't say anything on what we should do. The only thing they say is 'no corporal punishment'. Under the Continuous and Comprehensive Evaluation we are told to not even write any negative comments in the notebooks of the students, everything has to be told to the child in a positive manner. Other than this they do not tell us how we are to cope with disciplinary issues. What little guidance we get is from our Principal. (Headteacher, School 3).*

Findings showed headteachers complained that concerned authorities were not paying heed to the practical aspects of maintaining discipline in schools. Showing her displeasure over the exclusion of primary school teachers and headteachers from the decision-making process by concerned authorities, a headteacher stated:

*Managing the discipline in school has become so difficult now. The Sangathan is making its rules and regulations in Delhi with some subject experts sitting behind closed doors of their air-conditioned rooms. They have*

*never involved teachers in these discussions. The primary teacher might not have a load of certificates but they have a load of practical experience. Officials should call some primary teachers and listen to their suggestions too before making changes. (Headteacher, School D).*

Further, headteachers stated that under the present disciplinary norms they were not able to bring about a change in the behaviour of certain students, even though they have been given repeated counselling and threats. For instance, a headteacher commented:

*Sometimes we handle them with love or counsel them. Sometimes we tell them that we will make them sit in the first grade. Sometimes we even do it! There has to be the fear of something. We tell small kids that we will send them to a dark room. That is a PT room or storeroom. But the students know that nothing would happen and these are just threats. Nowadays children are just uncontrollable. (Headteacher, School 3).*

Teachers expressed their helplessness in maintaining discipline in classes and motivating students to complete assigned work on time. Findings revealed all sample teachers stated that they received support and guidance from their respective headteachers and principals in dealing with disciplinary issues with children. However, all teachers reported that there was no guidance from the KVS and they did feel the need for the KVS to organize workshops related to positive disciplining practices. Illustrations of these can be seen below:

*We do not receive any guidance from the Sangathan. We just keep getting circulars telling us 'no corporal punishment' but there are no guidelines for the positive disciplinary techniques we can use. They do say that we should not give negative remarks and say everything in a positive manner to the child. The teacher in-service courses that happen are only academic-based and have no discussion on disciplinary practices per se. (EVS teacher, School 1).*

*The Sangathan only says that we are not to hit the child or even rebuke him/her or say anything which might hurt their feelings. It is supposed to be a fear-free atmosphere that we have to give them. But how can they be without fear? Everyone has some fear or the other and we learn to live as per rules because of the fear. (EVS teacher, School, 2).*

## **Discussion and conclusion**

The use of CP was evident in the sample schools and the dilemma of reporting its practice to concerned authorities was an ethical issue that needed to be handled. However, the case at hand was one where authorities knew of the practice of CP whichever form they attributed it to. It was felt that one needs to pay heed to the helplessness of the teachers in maintaining discipline and the cultural sanction that allowed the practice of perceived mild CPs or mere punishment as it was termed.

Foremost, findings of this study demonstrated that participant teachers and headteachers do not have a clear understanding of children's rights. While they were able to list children's rights to safe and protected school environments and/or children's right to safety and protection, they lacked engagement with these rights. These findings resonate with other international studies which call for an increased level of knowledge and engagement of teachers with issues of human rights (Osler and Starkey, 2010; Casas, et al. 2006) and child rights (Waldron, et al., 2011). This is possible when teacher training courses are recognised as the areas of action (Jerome, Emerson, Lundy, & Orr, 2015) to develop knowledge and practices of child rights among pre-service teachers. Along with this refresher courses for in-service teachers also need to be developed.

Participants in this study were found to not have a clear understanding of acts pertaining to CP too. This resulted in them violating children's rights in their schools without even realising that their actions had transgressed boundaries. Accompanied with this is the overarching understanding of the adult-child relationship in India. As discussed by Lombardo and Polonka (2005) the teachers in this study were found to perceive chil-

dren as submissive beings who need dominant adults to teach them orderliness and transmit the cultural norms of society. The participant teachers were thus found to convince students that the punishments they receive are out of good faith and for their own betterment. Pacifying students before they go home, ensuring they beat students in places where the mark would not show, refraining from the use of punishment due to 'over sensitivity' of students or repercussions of discrimination were found to be more of a concern to the teachers and headteachers. Instead, they need to understand the repercussions of these forms of punishment on the overall well-being of students and recognise these acts as a violation of children's rights.

Findings show teachers lack engagement with children's rights, and the need to practice positive disciplinary practices. In fact, teachers and headteachers perceive these punishments as a necessary part of growing up and an act that helps children become competent and responsible individuals (NCPCR, 2008). Adults in India believe that children deserved to be punished due to their behaviour (Saath Charitable Trust, 2006). The Indian adults' ideology "I was hit as a child and it didn't do me any harm" (NCPCR, 2008, p.10) is passed on to children generation after generation. These children are made to believe that their parents indulge in punishment and beating children as a sign of their (parents) love and concern for them (the child) (NCPCR, 2008). These findings resonate in the present study too. Since these adults do not consider and comprehend the concept of children rights, they do not accept the fact that they have violated the rights of children by subjecting them to CP.

As long as teachers do not consider CP to be one of the ills of our society and a violation of children's rights, its use as a disciplinary tool will continue. What we need is to move beyond ratification of children's rights policies. Teachers need to critically engage with issues of children's rights violations within schools. It is in school that children can be made aware of their rights as children and then further their rights as human beings. To progress into a nation that is more humane, future generations studying in schools need to be respected

as individuals with their own identities rather than objects or the property of adults who are entrusted to their care. There is an urgent need for Indian schools to reposition themselves as rights-friendly schools that work within the children's rights framework. Schools should ensure children are recognised as individuals deserving equal amounts of respect, dignity, and importance as adults within society. This would not only bring about an environment of tolerance for diversity and abilities but would guarantee better environments that can cater to the holistic development of children.

However, none of this is possible unless bodies such as the KVSs move beyond issuing bland statements asking schools to not resort to CP without providing them with a clear understanding of acts that constitute CP, its consequence on children's psychology and training for all teachers in positive disciplinary practices. The tokenistic practice of children's rights, especially their right to safe and protected environments in schools is hence not only due to the lack of its practice in schools by teachers but largely pertaining to the lack of support and in-service training provided by bodies such as the KVSs. Mere instructions in the form of circulars to schools or inspections will not provide teachers with skills in positive disciplinary practices. It will only create the present environment. An environment where there is a lack of discipline among students, frustration among teachers, a callous attitude among some of the parents and students, and a feeling of helplessness and dissatisfaction among the stakeholders. Hence, bodies such as KVSs need to urgently work towards supporting teachers to use positive disciplinary skills through the development of training manuals and regular workshops which will provide them with the requisite knowledge and skills for positive disciplinary practices and children's rights.

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## Chapter 6

# Making Children's Rights to Education a Reality: Who pays? Who provides?

*Sonia Ilie and Pauline Rose*

### Abstract

In this chapter we take a children's rights-informed perspective to explore current debates around the provision, and financing, of education. We explore how the provisions of the foundational texts on children's rights (such as the UNCRC, 1989) with regard to payment for, and provision, of education, differ from the reality we encounter, at all levels of education. To do so, we argue that achieving both the letter and the spirit of children's rights to education requires that progress be made in terms of access to education, but also in terms of learning. We show how current levels of government expenditure on education are inequitable, and how these might interact with specific initiatives to diversify the provision of education (predominantly as secondary and higher education levels). We conclude that the children's rights lens is as important as ever for driving forward efforts towards equitable access and learning for all children

### Introduction

The right to education for all children is the foundation of current efforts to improve both access to schooling and learn-

ing while in school, globally. There is significant agreement at the highest levels of decision making regarding the status of education as a fundamental human right, and particularly as a crucial component of children's rights, with the rights-based discourse permeating UN, UNESCO, and UNICEF documents, and also underscoring actions under the Sustainable Development Goals (SDG) agenda.

The agreement on the importance of children's rights to education does not translate, however, into clarity concerning who pays and who provides education (UNESCO, 2007). International organisations, governmental institutions, education providers, and scholars in the field of education are currently engaged in debates around the levels of expenditure (both internal and in terms of aid) required to provide education for all, as well as the forms that the provision of education enabled by that expenditure can take. Within these debates, fairly widespread consensus emerges as to free primary education being instrumental in reaching the goal of universal primary enrolment by 2030, in direct relation to how primary education is referred to in Article 26 of the UN Declaration of Human Rights (1948). Provision questions are more prevalent with regard to secondary education. And the question on rights becomes more complicated for higher education, where it is not universally agreed that access to this level should be a right, and so the debates as to who pays and who provides are fiercer.

This chapter explores the aforementioned debates around provision and education expenditure, through the lens of children's rights to education.

The context in which we address these is the substantial progress still required for universal access to education and schooling. This is because despite it being enshrined in the UNCRC (Art. 28 and 29), the right for all children to reach their educational and intellectual potential is not yet fully realized. We observe enduring inequities in school access (despite recent improvements in primary school enrolment), and also in attainment and learning (UNESCO, 2017).

We argue that, fundamentally, the right to education encompasses more than just access to schooling. However

important access is, if it is not translated into learning for the children accessing schooling, their right to education will not have been realised. Therefore, the path to successfully implementing all children's rights to education necessarily raises considerations of universal school access alongside a significant improvement of learning levels, for all children.

A multitude of factors underscore the poverty-driven access and learning gaps we are currently observing across the world, but one of them is the unequitable distribution of public expenditure, so that the poorest benefit from disproportionately smaller shares of the public spend on education and therefore face substantial barriers to access and learning that manifest in diminished opportunities for individuals in disadvantaged circumstances, and on the whole, in substantial challenges for the realisation of children's rights to education.

This chapter begins by reviewing who pays and who provides education at different levels, from the perspective of the UN Declarations and Conventions related to children's rights. It then assesses the realities of who is paying and who is providing and the implications of this, by focusing on critical issues at each schooling level. It does so by synthesising critical evidence derived from secondary data analysis of educational access and expenditure patterns as contained in international database (such as the UNESCO Institute for Statistics database (2015), the WIDE educational inequality database (2018), as well as further analysis of large-scale surveys such as the Demographics and Health Surveys (2015)).

## **Who provides, and who pays for education: the UN convention perspective**

Since the late 1940s, UN declarations and conventions on rights have consistently recognized the right to education. However, a more detailed assessment suggests a more nuanced picture of how to interpret this right, in particular from the perspective of who pays and who provides education.

## Who pays

With respect to who pays, from the origins of the 1948 UN Declaration of Human Rights, the expectation has consistently been that primary schooling should be free. The statements are more ambiguous for secondary education. While the 1948 declaration did not identify who should pay, the 1966 the Covenant on Social and Cultural Rights indicated that free secondary education should be progressively introduced. By the 1989 Convention on the Rights of the Child, there was a further shift towards indicating that free secondary education should be implemented, along with targeted financial assistance to those most in need. In reality, by 2015, 71 countries guaranteed free education of at least 9 years, but only 41 guaranteed free education of at least 12 years (UNESCO, 2017).

By contrast, UN declarations and conventions have placed less emphasis on who should pay for higher education, with only the 1966 Covenant indicating that free higher education should be progressively introduced (as with secondary education). Current trends would seem to contradict this, with lower levels of public expenditure and higher rates of privatization evident in the higher education sector world-wide (Yang & McCall, 2014). This is further supported by the fact that only a small number of nations guarantee access to higher education to all (the situation most in line with a view of higher education as a human right), for instance Greece and Ecuador (UNESCO, 2017).

The above trends in payment and provision perspectives are reflected in the global development goals. While the Millennium Development Goal for education did not specify who should pay for education, the Education for All Framework for Action that ran parallel to this, proposed fee-free primary schooling. The Sustainable Development Goals (SDGs) indicate more emphatically than previously that schooling should be fee-free for up to nine years (target 4.1), which commonly includes primary and lower secondary education. With respect to higher education, the SDG target 4.3 specifies that this should be “affordable” and so, like the 1948 Declaration and 1989 Convention, avoids identifying this level as fee-free.

The question of who pays for early childhood education is missing from the UN declarations and conventions altogether. Similarly, the SDGs (and the EFA previously) do not comment on who should pay for this level of education. This is likely to be in light of the high cost of addressing the gap in moving from current levels of access to universal provision (Education Commission, 2016). This is despite evidence to suggest early childhood education is fundamental to narrowing inequalities in schooling access, learning, and later life chances. (Zubairi & Rose, 2016), and attempt to understand the manner in which early childhood education could potentially be financed to works towards equity (Putcha et al., 2016) so the silence on this issue is notable.

## Who provides

The UN Declarations and Conventions are even less clear with respect to who should provide education. This is reflected in recent heated debates concerning whose responsibility it is to provide education, particularly when it is seen as a right of all children. Generally, although not universally, there is acceptance that the state has responsibility to ensure the right to primary and secondary schooling is fulfilled. UNICEF in particular, contends that upon ratification of human rights instruments in relation to education, “states hold the primary responsibilities and are accountable to the holders of those rights for their implementation”. (p.39, 2007). At the primary level in particular, some non-governmental organisations campaign for the state to take responsibility for provision (e.g. Global Campaign for Education, 2013). This is also reflected in recent statements by the UN Rapporteur with responsibility to right to education:

*Education is a fundamental human right of which both the individual and society are beneficiaries. It is a public good and must be enjoyed by everyone, everywhere... governments must protect education against forces of privatization*

UN Special Rapporteur for the Right to Education, 2016

However, this does not necessarily mean that the state must directly provide education. Indeed, the UN Declarations and Conventions have from the outset been open to diverse approaches to provision beyond the state across levels of education. This openness has not, however, been accompanied by clarity. The 1948 Declaration stated that “parents have the right to choose the kind of education that shall be given to their children”. This could imply other forms of education would be available, or “the kind of education” might also relate to education in different languages or taking account of different religions, for example. The 1966 Covenant and 1989 Convention take a different perspective. They note the “liberty of individuals and bodies to establish and direct educational institutions” (Art. 29(2)), which implies that the state is not viewed as the only provider of education even if, in the case of primary schooling in particular, it should be free at the point of entry. It is however, within the responsibility of the state to ensure that systemic factors driving inequalities in access to education are addressed, regardless of who provides the educational experience in the first place, so that all may benefit equally from the resources allocated to education, and from education itself (UNICEF, 2007).

## **Who currently benefits from public spending on education?**

The UN Declarations and Conventions above set out the rights perspective with respect to who pays for education, and who provides it. This rights perspective sits alongside considerations of who benefits from public spending on education. The reality of who benefits from public spending is complex, with stark inequalities between and within nations.

When considering educational systems in the poorest countries in the world, the evidence generally agrees that overall public spending on education disproportionately favours the rich (Davoodi, Tiongson & Asawanuchit, 2010; Ilie & Rose, 2017). This means that the groups already at a social disadvantage are the same groups which are seen to attract a dispropor-



tionally smaller share of the public spending on education. We argue that this position is in direct opposition with the rights agenda and, on the whole, regressive.

This overall unequal distribution of public resources appears to not have shifted considerably over the past two decades (Castro-Leal et al., 1999). However, since the aggregate patterns of spending conceal significant differences by level of education, and since different levels of education have attracted significantly different amounts of support and efforts towards improvement, it is important to explore the by-level spending patterns.

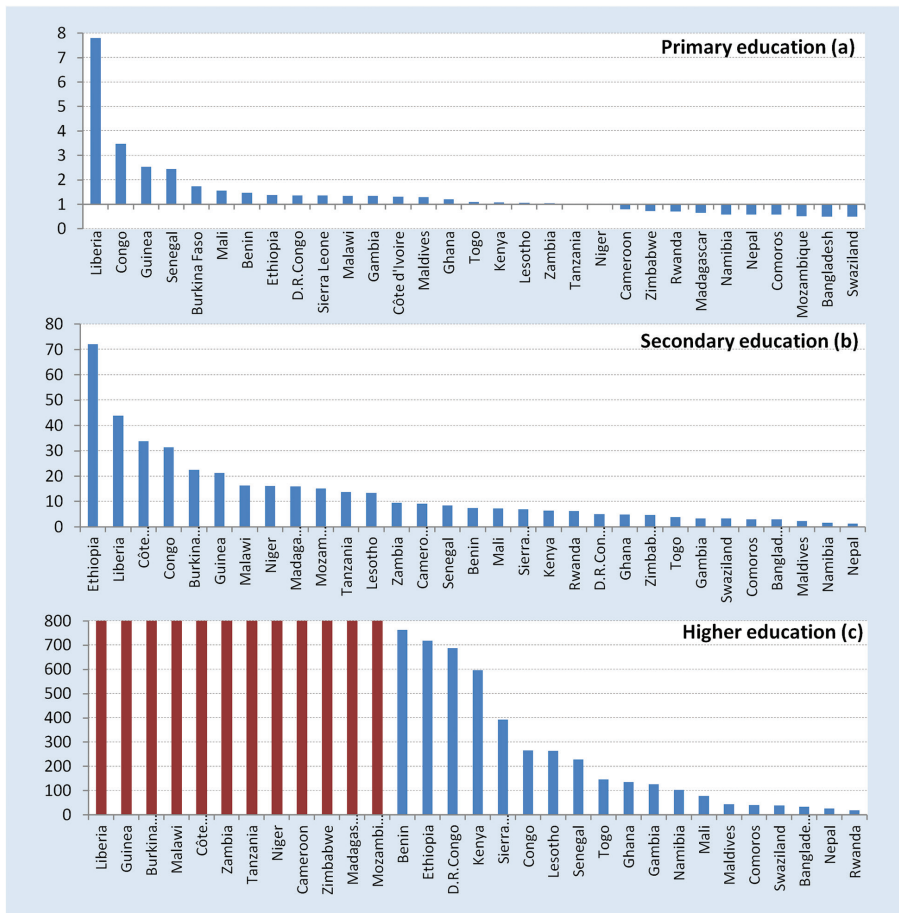
In work we have done elsewhere (Ilie & Rose, 2017, and Figure 1 below) we confirm that the overall pattern of expenditure favours the rich in a vast majority of the countries we have been able to secure data for. It must be noted that even equal government spend for different socio-economic groups may not be equitable, with compensatory measures often required to uphold particularly the poorest children's right to education, regardless of their background. Such measures can take the form of additional resource directed to schools catering for the most disadvantaged (such as in England, through the Pupil Premium, an additional fixed sum schools receive for every child deemed to live in disadvantaged circumstances (DfE, 2017)); or can consist of affirmative action-type provision members of traditionally under-represented groups receive fee waivers or grants (US Department of Education, 2018).

In close connection to the differences in perspective on who pays for education in the UN Declarations and Convention mentioned above, we also find that primary, secondary, and higher education respectively display very different patterns of government resource allocation.

For primary education we find a vast majority of countries operating a fairly equitable pattern of distribution of public spending. This echoes recent improvements in enrolment in primary education stemming from efforts triggered by the Millennium Development Goals, and the EFA framework. From the funding and access perspective, at least, it would appear that children's rights to education are being realized in terms

of access to primary education. Yet, to fully achieve the spirit of the rights of the child, the enduring inequalities in learning (Rose et al., 2016) which we still observe in many world nations must be tackled further. We return to these issues in relation to further developments around the provision of primary education in the next section.

**Figure 1 - Ratios of government expenditure between the richest decile and the poorest decile in each country respectively.**



Note: A ratio smaller than 1 indicates that the richest household deciles receive less benefit from government expenditure on education than the poorest decile, in each country. Red bars indicate countries where the richest:poorest ratio exceeds 1000. Source: Ilie & Rose (2017). Authors' calculations based on data from the UNESCO Institute for Statistics and the Demographics and Health Survey (DHS).

Further efforts towards the realization of children's rights to education are also required in response to our evidence that shows that at secondary and higher education levels, the distribution of public spending is far less equitable. In fact, all of the low- and lower-middle-income countries we explore display clearly regressive patterns of public spending on education, with the richest groups in each society attracting substantially higher shares of spend for secondary and higher education. This is linked to progressively diminished opportunities for access to secondary, and to higher education respectively, for the poorest.

In addition to enduring access inequalities at secondary and higher education levels, disproportionate benefits from public spending are also associated with unequal spending on levels of education when compared to the size of the enrolments at each respective level. We show that higher education in particular attracts a very high share of the total public spend on education (roughly one quarter), given that only about 3% of all enrolments across the countries with data are at this level (Ilie & Rose, 2017).

At the same time, and as a result of the vast improvements in universal primary education, enrolment numbers are highest in primary schooling, with between 60% and 80% of total enrolments. However, spending on primary education doesn't match this, with many countries only allocating less than 40% of their whole educational spend to primary.

We are not claiming that the ideal situation for the realisation of children's rights to education would be an equal split of government spend between primary, secondary and higher education. Indeed, each of these levels may come with different resource requirements; and there may be good reasons for particular nations not to display the same patterns throughout. We argue, however, that the disparity we currently observe between levels is too high. This is most definitely the case when considering our previous point, that both secondary and higher education are dominated by members of the richer groups in society. We propose that this is not only unequitable, but also in opposition with the rights perspective on education.

We also note that information on early childhood education is missing from the analysis, as a result of substantially reduced data availability about this sector. Given strong evidence from across the world (Jerrim & Vignoles, 2015; Zubairi & Rose, 2016) that early learning is paramount for future educational attainment, and for access to higher education, this is particularly worrying, as a lack of attention and monitoring mean fewer opportunities for early intervention and improvement.

We therefore find that unequal benefits from public spending between the rich and the poor represent a critical barrier to the achievement of equitable access to education for all children. Within the children's rights discourse, this highlights the importance of exploring issues surrounding the provision, funding, and benefits from public spending on education, by exploring each level of education in turn. This is precisely what we do in what follows.

## **Primary education: free at the point of entry for all?**

One of the greatest achievements of the Millennium Development Goals period from 2000 to 2015 is the huge growth in primary school enrolment. This has often been attributed to the abolition of primary school fees in countries where enrolment was particularly low, notably in sub-Saharan Africa (UNESCO, 2017). This provided opportunities for children from poor families to attend school for the first time. This has not been sufficient to ensure all children enter and complete primary school (Rose et al, 2016). However, it has meant that a number of countries have moved from an elite to a mass primary schooling system within a generation. This indicates that the commitment to fee-free primary education, first established in the 1948 Declaration, has finally been addressed at least with respect to formal fees. However, there continue to be a variety of indirect costs of education that parents have to pay even at the primary level, which continues to exclude children, and particularly those from the poorest backgrounds, from school (UNESCO, 2010).

Alongside this massive expansion in enrolment and abolition of fees, there has been a growth in private provision in a number of countries, including private schools that charge relatively modest fees (Ashley et al, 2014). This growth has often come about by default rather than by design, with parents choosing to send their children to these schools where they can afford to do so. This is at the heart of the contentious debate on who pays and who provides in the context of fee-charging private provision countering the move towards the right to fee-free primary schooling. At the same time, such developments are still potentially in line with the Declarations and Conventions with respect to allowing parents the right to choose, and the liberty of individuals and bodies to establish schools.

The main point of contention with respect to private primary schools is whether they offer the same, better, or worse, quality learning than state-run institutions. The evidence (Alcott & Rose, 2016) currently appears to suggest that children in private schools are often more likely to be learning than their peers attending state-run schools. But the evidence also suggests that any such gaps are not insurmountable; and that deprivation continues to be an obstacle to achieving the spirit of children's rights to education (i.e. not just access, but also learning), with the poorest still less likely to get access to better-performing schools and, even in private schools, less likely to learn than their richer peers (Alcott & Rose, 2016).

It is therefore important to consider the implications of the expansion of such private provision from a rights perspective including with respect to who pays. It is possible, for the growth in private primary schools to be in line with the rights agenda provided it is free at the point of entry. For this reason, some low- and lower-middle income countries have begun experimenting with voucher programmes, whereby parents are provided with resources which they can use to choose which school their child will attend. The limited evidence available from India and Pakistan, for instance, is mixed as to their effectiveness for providing more choice to parents and simultaneously improving access and learning rates (Ashley et al, 2014).

As an alternative approach to being free at the point of entry while diversifying provision, the recent Partnership for Schools Liberia programme has experimented with partnering private operators with government primary schools with the aim of improving quality (Romero, Sandefour & Sandholtz, 2017).

## **Secondary school: who benefits from fee abolition?**

While the 1948 Human Rights Declarations and 1966 Covenant were less forthcoming on who should pay for secondary education, the 1989 Convention was clearer about the introduction of fee-free secondary education with financial support to those most in need. While the MDGs (as originally framed) avoided engaging with the debate of who should pay for education at different levels, the SDGs mark a shift in focus, explicitly suggesting fee-free schooling for nine years, which in most countries corresponds to primary and lower secondary education.

There is already prior experience of secondary fee abolition in some of the poorest countries. For example, Kenya abolished secondary school fees in 2008 following the 2007 Presidential election. While Kenya is not one of the most unequal countries with respect to who benefits from public education spending, around six times more is spent on a rich secondary student than a poor student (see Figure 1). An important consideration for this is that only around half of the poorest girls even complete primary school, and so the other half have no chance to continue to secondary school, regardless of whether it is free or not (UIS, 2015).

The SDGs appear to have spurred other countries to adopt fee-free secondary education. Following a promise as part of Ghana's Presidential election campaign in 2016, the government announced free senior secondary schooling in 2017 (Akufo-Addo, 2017). Like Kenya, this is likely to only benefit the few. Available data on education inequalities (WIDE, 2018) show that only 30 out of every 100 of the poorest girls in Ghana complete primary school, with only three of these making it to senior secondary school.

## Higher education: a contested rights perspective

Higher Education is currently high on the international agenda, after a period of relative underrepresentation, with equality in access to higher education being included in the Sustainable Development goals. If access to, and learning in, primary and secondary are universally accepted components of children's rights to education, access to higher education is a substantially more contested matter (McCowan, 2017, 2015). While there is some (though definitely not universal) agreement that higher education benefits society on the whole (Oketch, McCowan & Schendel, 2014; McMahan, 2009), there is less agreement that it should either be fee-free, or that governments have the duty to provide it.

Further, the manner of inclusion of higher education access in both human rights, and global development goals, raises interesting questions as to the overlap between the rights perspective and the equity imperative embedded within. In particular, Article 26 of the UNDHR (1948) states that "higher education shall be equally accessible to all on the basis of merit" (Paragraph 1), and SDG goal 4.3. specifies that "men and women should have equal access to affordable quality higher education". Since the vast majority of those who currently access higher education are from the richer groups in society, equity concerns are still fully warranted, and as of yet not completely answered (Salmi & Bassett, 2014; Ilie & Rose, 2016). This is despite substantial growth in the scale of higher education provision (Trow, 2007) which has seen the expansion of access to previously under-represented groups. This growth has not happened homogenously across the world, however, with many low-income countries still exhibiting higher education access rates of under 5% (Ilie & Rose, 2016), and also showing disproportionately pro-rich distributions of expenditure (Ilie, Rose, 2017, Figure 1).

We therefore argue that increasing higher education access and rendering this more equitable might require different funding arrangements to what we currently see, with

potential subsidies (in the form of fee-waivers, income-contingent loans, etc.) for those from the poorest backgrounds potentially having progressive outcomes. Such subsidies are currently in use in a variety of countries (e.g. England runs a system of income-contingent loans, whereby all students can access loans which only need to be repaid once a certain threshold of annual income is reached post-graduation). All these measures go some way towards narrowing the access gap; however, none solve it completely, and so it remains that the poorest continue to not be able to realise their educational potential through higher education. To mirror our earlier point about access to, and learning within primary and secondary education being required for the spirit of children's rights to education to be achieved, we call for more robust evidence as to which approaches to financing higher education lead to a narrowing of inequalities in access, as well as in learning during, and earnings thereafter.

## Conclusions

In this chapter we have taken a macro-level perspective on the provision of, and payment for education, within the context of the rights of all children to education and schooling. We have argued that while the main legal instruments setting out children's rights, and human rights to education provide some clarity as to the nature of these rights, at least with regard to primary and secondary education, substantially less clarity derives from them in relation to the state-level mechanisms by which these rights can be realised.

In particular, the rights agenda is clear about the primary schooling needing to be free for all, but it is more ambiguous on who should provide that education. Similar arguments apply to secondary education. Meanwhile, higher education exhibits an entirely different pattern of assumed provision and payment arrangements, and fundamentally, a lack of consensus as to its status as a human right is tenable within the stark inequality landscape dominating primary and secondary education in some parts of the world.



Even less is forthcoming in relation to pre-primary and early-years education, despite evidence to suggest that progressive universalism in relation to school attendance and learning starts with inequality-reducing efforts in education from the earliest stage of children's lives.

We see some mirroring of these issues in the framing of the global goals, with SDGs more explicit in some regards. Notwithstanding the rights agenda and global goals frameworks, the reality shows a much more mixed picture of who pays and who provides, and ultimately of who benefits from public spending on education.

Furthermore, evidence suggests that some of the progress toward achieving equitable access and learning across the whole education life course of an individual might be helped by investment in other equity-related sectors, for instance social care or equivalent (Walker, 2016). In this sense, concerted efforts across accounts to target government expenditure consistently at the most disadvantage, in a progressive manner, might result in complementary benefits to equity in education, and reinforce children's rights more broadly.

As things stand, however, inequitable access to education, and inequitable learning patterns, whereby the poorest in a vast majority of societies have fewer chances to realise their educational potential, at all levels of education, continue to represent significant stumbling blocks in the paths towards the realisation of children's rights to education. This is despite significant improvements in recent decades in both access to education and learning. As this expansion has occurred, the questions of who pays, and who provides education in increasingly larger systems, have gained prominence, and the various models adopted by nation states require further scholarly attention. Within this, the rights agenda is as important as ever in driving forward efforts towards access to education and towards learning opportunities for all children, so that each and every one of their educational potentials may be reached.

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*“The discussions in this book take into account the need for not only focusing on individual perspectives and practices but also examining the social structures that impact on children’s rights. It provides a nuanced discussion in relation to the academic debates in the field, but also extends its scope by providing a powerful illustration of how collaboration between academics and practitioners can advance knowledge and impact on practices.”*

Dr Nidhi Singal, University of Cambridge.

**International Perspectives on Practice and Research into Children’s Rights** is intended as a facilitator of cross-border conversations between practitioners, researchers and policy-makers working in the broader field of education and children’s rights. The volume is co-edited by Dr Gabriela Martinez Sainz (Centre for Human Rights Studies) and Dr Sonia Ilie (University of Cambridge). It brings together contributions that provide relevant examples of research and practices combining critical and theoretical explorations and empirical evidence about children’s rights, addressing issues such as access to education, inequality, violence, corporal punishment and child participation.

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