

FACTA UNIVERSITATIS

Series: **Law and Politics** Vol. 13, N° 2, 2015, pp. 87 - 98

Original Scientific Paper

THE CRC COMMITTEE AND CHILD DIGNITY*

UDC 342.726-053.2

341.231.14-053.2

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Abstract. *Dignity has different dimensions and features; it 'belongs' to philosophy, sociology, psychology and law, but it is also closely related to science, in particular medicine and biology. Respect for human dignity is a supreme, overarching principle of human rights law. Even though dignity is not defined in international law, its place, contents and power become clear in the process of human rights implementation. Dignity, like human rights, is inherent and belongs to each and every human being. Human dignity principle is affirmed in the Universal Declaration on Human Rights of 1948 and subsequently in other human rights treaties, including the Convention on the Rights of the Child, where dignity appears both in the preamble and in several articles. The main question is how relevant dignity is for the implementation of that treaty. Dignity of the child is not among the general principles of the CRC (best interests of the child, non-discrimination, child participation and right to life, survival and development), even though it is an overarching principle of human rights. In 23-year life of the Convention on the Rights of the Child, there has not been a related event (meeting or a document) devoted to the question of dignity of the child. The Committee on the Rights of the Child, monitoring body of the Convention on the Rights of the Child, uses in its documents wording such as 'dignity', 'human dignity', 'inherent dignity', 'dignity of the child', but it is not clear how beneficial, or even relevant at all, that is for the actual exercise of rights. Maybe now is a right moment for the Committee on the Rights of the Child to address the issue of child dignity and engage in a discussion, initiate a study or even adopt a related General Comment. Such document would be useful for the States Parties, the children and practitioners worldwide. But more than that, it would additionally credit the slight gain over disbelievers in child autonomy and additionally boast the so needed 'implementation'. The rights-based approach to children still has a heavy odor of pure protection and will be so for as long as children are not perceived as human beings with inherent human dignity and worth. It may be so that 'child dignity' approach is a missing link towards full*

Received December 16th, 2015 / Accepted December 18th, 2015

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*Published in: The CRC Committee and Child Dignity, in: J.J. de Graaf and others: *Rechten van het Kind en Waardigheid*, Ars Aequi Libri, Nijmegen, 2013. p. 29-42.

implementation of the rights of the child and change of attitudes so that children are perceived as human beings with autonomy, will, integrity and worth.

Key words: *Human Rights, human dignity, child dignity, the Convention on the Rights of the Child, the Committee on the Rights of the Child, implementation.*

The concept of dignity requires that every child is recognized, respected and protected as a rights holder and as a unique and valuable human being with an individual personality, distinct needs, interests and privacy.

*(CRC Committee: General Comment no. 13:
The right of the child to freedom from all forms of violence)*

INTRODUCTION

Human dignity is subject a topic of interest in of philosophy, sociology, psychology and law, but it is also closely related to natural sciences, in particular medicine and biology. Respect for human dignity is believed to be a supreme, overarching principle of human rights law. Even though dignity is not defined in international law, its place and power is obvious in the process of human rights building and implementation. Dignity, like human rights, is inherent and belongs to every human being. The human dignity principle is affirmed in the Universal Declaration on Human Rights of 1948 and subsequently in other human rights treaties, including the Convention on the Rights of the Child, where dignity appears both in the preamble and in several articles. Dignity of the child is not proclaimed as a specific right of this Treaty, so the question arises is how relevant dignity is for its implementation.

The Committee on the Rights of the Child, the monitoring body of the Convention on the Rights of the Child (and its three Optional Protocols), did not place dignity of the child among the general principles of the Convention on the Rights of the Child (best interests of the child, non-discrimination, child participation and right to life, survival and development), even though it seems to be an overarching principle of human rights. In the 23-year life of the Convention on the Rights of the Child, there has not been a related event (meeting or a document) that had dealt exclusively with the question of dignity of the child. The CRC Committee uses wording such as ‘dignity’, ‘human dignity’, ‘inherent dignity’, ‘dignity of the child’ in its documents, but it is not clear how beneficial, or even relevant at all, it is for the actual exercise of rights. It is also not clear whether the Committee on the Rights of the Child interprets dignity of the child as relevant to all rights or just to some. However, it was in the 2009 General Comment 13 that the CRC Committee provided, for the first time, a clear statement on the concept of dignity. This expression of intent to offer its understanding of the child’s dignity is a reflection of the CRC Committee’s ever maturing capacity of interpretation and its sensitivity for concepts that go beyond rights proclaimed within.

The aim of this Article is to assess the Committee on the Rights of the Child’s understanding of child’s dignity, in particular through the analysis of its Concluding Observations and General Comments, to propose steps which that body should take in order to further address the issue of child dignity and engage in a discussion, to initiate a study, and even adopt a related General Comment.

1. HUMAN DIGNITY OF THE CHILD – HUMAN RIGHTS OF THE CHILD

Human dignity has been subject of scholarly discussions; academics and researchers have written studies and articles on human dignity, in particular on its relation to human rights. However, there is insufficient discussion on and even lesser practical understanding of what human dignity of the child is. While there is a practical philosophical debate on the question of the foundational role of human dignity in international human rights¹, it is safe to state that there is a strong relation between the two. International law, as well as national laws and jurisprudence, all confirm the relationship between human dignity and human rights. It is believed that the idea of human dignity has become 'a central organizing principle in the idea of universal human rights.'² Therefore, human dignity of the child is in close relationship with rights of the child.

International human rights documents assign human dignity a very central role, though without any explanation of its features or contents. The Universal Declaration of Human Rights of 1948 states in its Preamble that 'the inherent dignity' of all members of the human family is 'the foundation of freedom, justice and peace in the world.'³ Thereafter, human dignity is given special attention in other major human rights treaties and other documents, but again in principle, with no further explanation of its conceptual or practical meaning. The term appears and reappears in preambles and Articles of international human rights treaties, but in such wording and contexts that it gives us insufficient sense of what it means to treat someone as a person with 'human dignity' or how to translate it into arguments in a possible claim of rights.

The question whether 'human dignity' can be defined by law remains open. Maybe a strict definition is not possible and not needed at all. Why is this so? Firstly, the concept of human dignity is stated at a very high level of generality⁴ and that is possibly the only way to do it, since it would be impossible to find a definition of such a principle that satisfies everyone, particularly in a multicultural context. Second, any definition of human dignity may prove to be too rigid, thus impeding implementation.⁵ Even without defining human dignity through its contents, it is possible to give it normative content by thus contributing to methods of human rights interpretation and adjudication. There are certain features embedded in the UDHR preamble paragraphs such as *inherence* and *equality* ('belongs' to all). Interpretation of human dignity, as it translates into real life situations, is left to a kind of intuitive understanding that it is a supreme value, a kind of highest guiding principle in treatment of people, conditioned by cultural factors.⁶ Maybe this was the reason why it was easier to proclaim dignity as fundamental human right in a regional treaty, applying to seemingly similar cultural and legal context: Article 1 of the European Charter on Fundamental

¹ Utrecht University Project proposal:

http://www.uu.nl/SiteCollectionDocuments/GW/GW_Nieuws/2011/Duwell_humandignity_proposal.pdf

² McCrudden, Christopher: *Human Dignity and Judicial Interpretation of Human Rights*, in: *European Journal of International Law* Vol.19 no.4, 2008, p.675.

³ Universal Declaration of Human Rights, UN GA Res 217A(III), UN Doc A/810 (1948)

⁴ Op. cit. McCrudden, Christopher, p. 679.

⁵ Andorno, Roberto: *Human dignity and human rights as a common ground for a global bioethics*, in: *Journal of Medicine and Philosophy*, 2009, p. 6

⁶ Donnelly, Jack: *Human Dignity and Human Rights*, Swiss Initiative to Commemorate the 60th Anniversary of the UDHR: *Protecting Dignity: An Agenda for Human Rights*, 2009, p. http://www.udhr60.ch/report/donnelly-HumanDignity_0609.pdf

Rights⁷ proclaims that 'Human dignity is inviolable. It must be respected and protected.' In the legal explanation provided by the European Union: 'The dignity of the human person is not only a fundamental right in itself but constitutes the real basis of fundamental rights...It results that none of the rights laid down in this Charter may be used to harm the dignity of another person, and that the dignity of the human person is part of the substance of the rights laid down in this Charter. It must therefore be respected, even where a right is restricted.'⁸ Proclaiming human dignity as a 'fundamental right in itself', 'the real basis of human rights' and 'dignity of the human person' as 'part of the substance of the rights,' certainly represents a breakthrough in international human rights law. If human dignity is a fundamental right that includes inherence, equality, autonomy and integrity of a person and if it involves the right to respect⁹, then we are closer to find ways to give it practical value, and consequently, give it a specific meaning in implementation of each human right.

Prior to the adoption of the Convention on the Rights of the Child (the CRC)¹⁰, there was an assumption that major international human rights documents cover all individuals and groups of people, including children, so, all human rights treaties apply directly or indirectly to children as well. Therefore, the proclamation of human dignity as the most fundamental principle of human rights applies to children as well. With the adoption of the CRC, children are recognized as having human dignity, as the term is present in its Preamble and in several articles. The CRC creates obligations for States Parties, so any word, principle, definition or concept used in this treaty is relevant for the implementation of the rights of the child. This implies that there must be a way to give a special place, define or find a practical way to ensure respect for human dignity of the child in relation to each right of the child. If the concept of human dignity has a methodological value, then a better understanding and explanation of human dignity of the child can provide a clearer guidance in implementation of particular rights of the child. That could be especially important for handling of complaints under the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (OPIC).¹¹

2. DIGNITY IN THE CRC

The CRC now has a membership of 193 States, which makes it the most universally ratified international treaty. The fundamental rights of children – all persons under the age of 18 – are clearly defined in this legal document and universally accepted. Children were finally recognized as subjects of rights, with dignity, to be respected and treated accordingly.¹² Three additional instruments were adopted to supplement this historic international treaty: The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC)¹³,

⁷ Charter of Fundamental Rights of the European Union (2000/C 364/01), OJ (2000) C364/1

⁸ Available at: http://www.eucharter.org/home.php?page_id=8

⁹ UNESCO Universal Declaration on Human Genome and Human Rights, 1997, UN GA Res A/RES/53/152, 1998

¹⁰ Convention on the Rights of the Child, UN GA resolution 44/25 of November 1989

¹¹ Optional Protocol to the Convention on the Rights of the Child on a communications procedure, UN GA resolution 66/138 of 19 December 2011

¹² Lee, Yanghee: Foreword, in: Vuckovic Sahovic, Nevena; Doek, Jaap and Zermatten, Jean: *The Rights of the Child in International Law*, Staempfli Publishers, 2012, p.XV

¹³ Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, UN GA resolution A/RES/54/263 of 25 May 2000

The Optional Protocol on the Involvement of Children in Armed Conflict (OPAC),¹⁴ both in 2000 and the OPIC in 2011.

The Preamble of CRC mentions dignity three times, recalling the Charter of the United Nations: 'Considering that... recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...', '[b]earing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom...', and further on more child specific: 'Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity.' The last quoted Preamble paragraph provides basis for the upbringing of children in the spirit of dignity and could be interpreted as a foundation upon which all rights in the CRC should be interpreted.

In spite of strong proclamation of the importance of human dignity for the CRC, only five articles of this Treaty mention dignity. In Article 23 on the rights of children with disabilities: 'States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.' Article 28 on the right to education, introduces the term *child's human dignity*: 'States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.' In Article 37 on the prohibition of torture and on deprivation of liberty, there is a general request to the States parties, quite like those in other human rights instruments: 'Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.' Article 39 creates obligations to the States parties to take all measures to: 'promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.' Article 40 of the CRC on the administration of juvenile justice proclaims: 'States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.'

It is unclear what motivated the drafters to introduce the concept of dignity in only those five rights of the CRC. It seems that dignity is assigned only in relation to some rights that deal with special circumstances of children, such as contact with the justice system, disability, administration of school discipline (protection from violence) or treatment of children victims of abuse, neglect, torture or armed conflicts. There is no consistency to justify such a choice. Had the idea been that children who are in circumstances that require special protection measures deserve special reminder for reference to respect of their dignity, it should also apply

¹⁴ Optional Protocol on the Involvement of Children in Armed Conflicts UN GA resolution A/RES/54/263 of 25 May 2000

to refugee children, minority children or children victims of violence of all kinds. Moreover, it is not clear why drafters have avoided underlying dignity of the child with regards to economic, social and cultural rights. But, maybe it was just too early to do so at the time when the Convention was adopted; The concept of dignity began to feature more prominently in 1993, as it became a central organizing principle of the World Conference on Human Rights held in Vienna, Austria.¹⁵ The Vienna Declaration and Programme of Action proclaimed this concept as essential to human rights in general as well as to particular areas of human rights.¹⁶ After further expansion of the concept of human dignity in international treaties, and in particular with the introduction of the human dignity as a fundamental right in the Charter of the Fundamental Rights of European Union, the CRC provisions seemed somewhat weak; they reflect a cliché - like attitude of drafters who used the term as an 'empty or haplessly vague concept, or a merely formal principle.'¹⁷

Quite recently, under the title 'Fundamental principles,' in the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice,¹⁸ dignity is listed among the principles. For the purposes of this document, child dignity is defined through a request for specific treatment: 'Children should be treated with care, sensitivity, fairness and respect throughout any procedure or case, with special attention for their personal situation, well-being and specific needs, and with full respect for their physical and psychological integrity. This treatment should be given to them, in whichever way they have come into contact with judicial or non-judicial proceedings or other interventions, and regardless of their legal status and capacity in any procedure or case.'¹⁹ The provision on dignity also includes a prohibition in treatment: 'Children shall not be subjected to torture or inhuman or degrading treatment or punishment.'²⁰

However, there were and there still are many opportunities for the interpretation of child's human dignity in light and in spirit of increased efforts to give the concept of human dignity a more exact meaning and assign it a more precise role in international human rights law. The best address to call for such interpretation is the CRC Committee on the Rights of the Child.

3. THE CRC COMMITTEE'S UNDERSTANDING OF DIGNITY

The CRC Committee on the Rights of the Child (the CRC Committee) is a body of experts established with the 'purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken' in that international treaty (CRC Article 43). In the examination process, the CRC Committee adopts a set of recommendations, called *Concluding Observations*, reflecting the main points in the complex process of evaluation of a State Party's progress in implementing the CRC. In addition, the CRC

¹⁵ <http://www.ohchr.org/EN/ABOUTUS/Pages/ViennaWC.aspx>

¹⁶ Vienna Declaration and Programme of Action, World Conference on Human Rights, Vienna, June 1993, UN Doc A/CONF 157/24 (Pt 1), at 20 (1993), Preamble, articles 11, 18, 20, 25, 55.

¹⁷ Donnelly, Jack: *Human Dignity and Human Rights*, p.82

¹⁸ Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies. Available at: <https://wcd.coe.int/ViewDoc.jsp?id=1705197&Site=CM>

¹⁹ Section III.C.1.

²⁰ Section III.C.2.

Committee is authorized (CRC Article 45) to make general recommendations, which includes *General Comments* and *Recommendations* in regarding its actions and events, such as Days of General Discussion.²¹ As stated earlier, the CRC Committee often reaches out for human dignity or the child's dignity; however, it does not offer much substance for the States parties and other actors, including children, to understand what it means or how they should understand and apply the CRC Committee's respective observations, recommendations or comments. These questions can be answered by a review of the CRC Committee's documents, most importantly the Concluding Observations and the General Comments.

3.1. Concluding observations

When the CRC Committee receives a State party report on the progress of implementation of the CRC, it is examined and the CRC Committee prepares so called Concluding Observations (COBs), which is a set of recommendations, reflecting the main points of discussion, indicating concerns as well as issues which require specific follow-up action at the national level. The COBs are public and are posted on the website of the CRC Committee²² shortly after their adoption. Although the CRC in itself imposes obligations on States, the CRC Committee does not have the prerogatives of a court. However, the Concluding Observations provide guidance and encouragement to States to make improvements in children's lives by strengthening the implementation of the CRC.²³ Taking into account such significance of the Concluding Observations, eighty-three sets of recommendations, adopted in the period 2000-2011 were reviewed for the purpose of this text. All of these recommendations have at least one paragraph (dealing with a particular right/issue) in which dignity is mentioned.²⁴

In reviewed recommendations dignity is mentioned in relation to a number of Articles of the CRC: Article 2 (prohibition of discrimination), Article 4 (general measures of implementation), Article 5 (parental responsibilities and guidance), Article 12 (respect for the views of the child), Article 17 (access to information and protection from harmful information), Article 19 (protection from violence), Article 20 (children without parental care), Article 23 (children with disabilities), Article 24 (right to health), Article 22 (refugee children), Article 28 (right to education), Article 34 (sexual exploitation and sexual abuse), Article 37 (torture and deprivation of liberty), Article 39 (recovery and reintegration of victims), Article 40 (juvenile justice) and Article 42 (dissemination of the principles and provisions of the CRC). However, dignity is most often mentioned within issues of violence, right to education (administration of school discipline), torture and deprivation of liberty, recovery and reintegration of victims and juvenile justice. The CRC Committee, mostly resorts to the wording of the CRC itself, and most often mentions dignity in relation to four (out of five) CRC rights that refer to 'dignity'. Even though dignity is often associated with children with disabilities, the CRC Committee used it very rarely. The same applies to all other listed rights; they were used on several occasions, but not systematically.

²¹ Vuckovic Sahovic, Nevena; Doek, Jaap and Zermatten, Jean: *The Rights of the Child in International Law*, p. 352-357.

²² <http://www2.ohHRC.org/english/bodies/crc/index.htm>

²³ All documentation is available on the website of the Committee on the Rights of the Child: <http://www2.ohHRC.org/english/bodies/crc/>. In addition, see Country Reports and Session Reports.

²⁴ All Concluding observations available at <http://www.ohchr.org>. www.universalhumanrightsindex.org is suggested as a good search engine.

Almost all of the reviewed recommendations have a section on violence against children, in particular on the use of corporal punishment in settings such as family, school, state-care and penitentiary institutions and schools. Typically, such recommendations firstly suggest that the State Party take measures to adopt or amend legislation and undertake or intensify awareness-raising campaigns so as to, for example, '...change perceptions regarding corporal punishment and promote alternative forms of discipline in a manner consistent with the child's human dignity and in accordance with the CRC...' ²⁵The CRC Committee attaches significant importance to child dignity in relation to all forms of violence, especially in settings such as schools, police stations and penitentiary institutions, and uses this "standard" wording: 'consistent with the child's human dignity.'

There are also references to human dignity with regards to treatment of child victims. In its Concluding observations on the implementation of the CRC in the Republic of Korea the CRC Committee '... recommends that the state party further develop child-friendly procedural rules and ensure the child victim is treated with greater respect for his or her privacy and dignity and urges it to ensure, through adequate legal provisions and regulations, that all child victims and/or witnesses of crimes, e.g. child victims of abuse, domestic violence, sexual and economic exploitation, abduction, and trafficking and witnesses to such crimes...' ²⁶

Regarding children with disabilities, the CRC Committee mentions dignity when underlining the need for the introduction of general measures to implement rights of these children and recommends that the State Party: 'take necessary measures to prevent de facto discrimination against children with disabilities and integrate them into society, including education and cultural activities, taking into account their dignity ...' ²⁷ or that the State party: 'ensure that education on sexual and reproductive health and rights is provided in age-appropriate and accessible formats and respectful of the dignity of students with disabilities ...' ²⁸

Even though the term dignity does not appear in some Articles, the CRC Committee mentions it in consideration of several rights. A good example is the right to access to information and protection of children from harmful information where the CRC Committee recommends that the State party 'consider adopting specific legislation and develop appropriate guidelines to protect children from harmful information, materials and marketing practices that undermine the welfare and dignity of children' ²⁹ In its Concluding observations to Nicaragua, the CRC Committee recommends that the State party 'ensure that both the private and public media respect child rights, especially the dignity of the child.' ³⁰

The CRC Committee also expressed concern regarding human dignity of a refugee and displaced child and asked the State to 'ensure that returnees are repatriated and resettled, in safety and dignity, to their place of origin or choice.' ³¹

There are other examples of the CRC Committee's Concluding observations referring to dignity and that should certainly be explored further. Maybe an awareness raising campaign

²⁵ Grenada: CRC/C/GRD/CO/2(CRC,2010)

²⁶ Republic of Korea: CRC/C/KOR/CO/3-4 (CRC, 2012)

²⁷ Saudi Arabia: CRC/C/SAU/CO/2 (CRC, 2006)

²⁸ Costa Rica: CRC/C/CRI/CO/4 (CRC, 2011)

²⁹ Bangladesh: CRC/C/BGD/CO/4 (CRC, 2009)

³⁰ Nicaragua: CRC/C/NIC/CO/4 (CRC, 2010)

³¹ Bhutan: CRC/C/15/ADD.157 (CRC, 2001)

aimed at the CRC Committee experts could enhance a targeted, more specific and more explanatory use of the concept of child's human dignity in the Concluding observations.

3.2. General comments

Article 45 under Division (d) of the Convention authorizes the CRC Committee to make general recommendations and to transmit them to any State concerned. The practice of publishing General Comments or General Recommendations is a well-established part of activities of human rights treaty bodies. The General Comments became documents that interpret provisions of a treaty and their implications for measures of implementation to be taken by States parties. The CRC Committee joined this practice of human rights treaty bodies in 2001. Since then it has produced seventeen General Comments (GC) on various thematic issues.³² General Comments contain interpretations of various provisions of the Convention by the CRC Committee and a wide range of suggestions and recommendations, sometimes of a very concrete nature, for legislative, social and other measures that States should take in order to comply with their obligations under the Convention.

Majority of the CRC Committee's GCs mention dignity. However, six GCs do not have any reference to dignity (see Chart 1 below). In some cases, dignity is mentioned in citation of a particular CRC provision. For example, in GC 4³³ on Adolescent health and development in the context of the Convention on the Rights of the Child, the CRC Committee refers to Article 39 of the CRC: 'Adolescents...have the right to physical and psychological recovery and social reintegration in an environment that fosters health, self-respect and dignity.'³⁴ In GC 1 on the aims of education³⁵ the CRC Committee underlines that 'Compliance with the values recognized in Article 29 (1) clearly requires that schools be child-friendly in the fullest sense of the term and that they be consistent in all respects with the dignity of the child.'³⁶ There are other similar examples, where the CRC Committee quotes its previous GCs such as is the case in GC 7 on implementing child rights in early childhood³⁷: 'General comment No. 1 on the aims of education explains that the goal is to "empower the child by developing his or her skills, learning and other capacities, human dignity, self-esteem and self-confidence" and that this must be achieved in ways that are child-centered, child-friendly and reflect the rights and inherent dignity of the child.'³⁸

In its GC 10 on children's rights in juvenile justice, that the CRC Committee devotes a whole section to respect for the dignity of the child and explains such respect as a 'fundamental principle for the treatment to be accorded to children in conflict with the law.' Such treatment is the one that is '...consistent with the child's dignity and worth.' In continuation, the CRC Committee explains: 'This principle reflects the fundamental human right enshrined in Article 1 of UDHR, which stipulates that all human beings are born free and equal in dignity and rights. This inherent right to dignity and worth, to which the preamble of CRC makes explicit reference, has to be respected and protected

³² For the full list of the General Comments and all texts see: <http://www2.ohchr.org/english/bodies/crc/comments.htm>

³³ CRC/GC/2003/4, 1 July 2003

³⁴ GC4 paragraph 37

³⁵ CRC/GC/2001/1, 17 April 2001

³⁶ GC1 paragraph 8

³⁷ CRC/C/GC/7/Rev.1, 20 September 2006

³⁸ GC1 paragraph 2

throughout the entire process of dealing with the child, from the first contact with law enforcement agencies and all the way to the implementation of all measures for dealing with the child.' The CRC Committee even goes one step further, providing contents to the request for the respect of the dignity of the child and states that '...Respect for the dignity of the child requires that all forms of violence in the treatment of children in conflict with the law must be prohibited and prevented.'

Like in the Concluding observations, the reference to dignity in some GCs goes beyond the CRC. In GC 1, the CRC Committee states that 'discrimination on the basis of any of the grounds listed in Article 2 of the Convention, whether it is overt or hidden, offends the human dignity of the child...' This is a very important statement and it deserves additional elaboration by the CRC Committee. In the GC 6 on treatment of unaccompanied and separated children outside their country of origin, the CRC Committee stresses the importance of repatriation of those children, but adds it '...should be voluntary...under conditions of safety and dignity...' A very important reference to child dignity is in GC 7: 'In providing appropriate assistance to parents in the performance of their child-rearing responsibilities (art. 18.2), States parties should take all appropriate measures to enhance parents' understanding of their role in their children's early education, encourage child-rearing practices which are child-centered, encourage respect for the child's dignity and provide opportunities for developing understanding, self-esteem and self-confidence.'³⁹ Here, the CRC Committee assigns child dignity to parenting, placing it in the focus of measures to support parents in their child-rearing practices.

Two CRC Committee's GCs deserve special attention since they reflect the CRC Committee's progress in understanding child's human dignity and assigning it a special place and meaning, even defining it as a right of the child. First, it is GC 8 on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment⁴⁰. In the introductory paragraphs of the GC, the CRC Committee proclaims the right of the child to respect for the child's human dignity: 'The Convention on the Rights of the Child and other international human rights instruments recognize the right of the child to respect for the child's human dignity and physical integrity and equal protection under the law.'⁴¹ In addition, the CRC Committee states that it is '...encouraged [to see] that a growing number of States are taking appropriate legislative and other measures to assert children's right to respect for their human dignity and physical integrity and to equal protection under the law.'⁴² A little later, the CRC Committee adds that 'the dignity of each and every individual is the fundamental guiding principle of international human rights law.'⁴³

Secondly, in GC 13 on the right of the child to freedom from all forms of violence,⁴⁴ the CRC Committee even offers a definition of the 'concept of dignity': 'The concept of dignity requires that every child is recognized, respected and protected as a rights holder and as a unique and valuable human being with an individual personality, distinct needs, interests and privacy.'⁴⁵ In the same GC, there is one more statement that children have 'fundamental rights to respect for their human dignity and physical and psychological integrity.'⁴⁶ So, the 'child's

³⁹ GC7 paragraph 29 (a)

⁴⁰ CRC/C/GC/8, 2 March 2007

⁴¹ GC 8 paragraph 2

⁴² GC 8 paragraph 5

⁴³ GC 8 paragraph 16

⁴⁴ CRC/C/GC/13, 18 April 2011

⁴⁵ GC 13 paragraph 3(c)

⁴⁶ GC 13 paragraph 13

right to dignity' is asserted here as a fundamental right. More importantly, the CRC Committee sets as an objective of the GC: '...to promote a holistic approach to implementing Article 19 based on the Convention's overall perspective on securing children's rights to survival, dignity, well-being, health, development, participation and non-discrimination.'⁴⁷ Here, the CRC Committee adds rights to dignity and well being to the existing list of rights in the CRC. Finally, in GC 13 the CRC Committee proclaims the child's 'absolute right to human dignity.'⁴⁸

So, is human (child's) dignity a fundamental guiding principle of international human rights law, fundamental or absolute human right in itself or both? Even though the CRC does not proclaim such a right, it seems that the CRC Committee believes the children's right to respect for their human dignity exists. The CRC Committee's proclamation that children have a right to respect for their human dignity was not reiterated in the last four GCs. Actually, child's human dignity was recalled in the CRC wording in GC14 on the right of the child to have his or her best interests taken as a primary consideration⁴⁹, as a request for the respect for the child's dignity, and it was not even mentioned in the last three GCs.

Chart 1 Dignity in the CRC Committee's General Comments

Number	General Comment	Dignity
1.	The aims of education (2001)	YES
2.	The role of independent national human rights institutions in the promotion and protection of the rights of the child (2002)	NO
3.	HIV/AIDS and the rights of the child (2003)	NO
4.	Adolescent health and development in the context of the Convention on the Rights of the Child (2003)	YES
5.	General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6) (2003)	YES
6.	Treatment of unaccompanied and separated children outside their country of origin (2005)	YES
7.	Implementing child rights in early childhood (2005)	YES
8.	The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (2006)	YES
9.	The rights of children with disabilities (2006)	YES
10.	Children's rights in juvenile justice (2007)	YES
11.	Indigenous children and their rights under the Convention (2009)	YES
12.	The right of the child to be heard (2009)	NO
13.	The right of the child to freedom from all forms of violence (2011)	NO
14.	The right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1) (2013)	YES
15.	The right of the child to the enjoyment of the highest attainable standard of health (art. 24) (2013)	NO
16.	State obligations regarding the impact of the business sector on children's rights (2013)	NO
17.	The right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31) (2013)	NO

⁴⁷ GC 13 paragraph 11

⁴⁸ GC 13 paragraph 17

⁴⁹ CRC/C/GC/14, 29 May 2013

4. THE WAY FORWARD: A GC ON CHILD'S HUMAN DIGNITY?

In conclusion, there are still more questions than answers on the Committee's understanding of the child's dignity. Analysis of the CRC Committee's documents has provided evidence of strong presence of the idea of the child's dignity. The CRC Committee, in essence, states: that child dignity is inherent; that child human dignity is a fundamental guiding principle of international human rights law; that discrimination and violence offend human dignity of the child; that dignity is a concept (an overarching principle); that child's dignity is a prerogative for exercise of children's rights; that children have (absolute; fundamental) right to dignity; that child's dignity is understood as encompassing child's worth, self-esteem, self-confidence, self-reliance, well-being and integrity. The CRC Committee's interpretation of child's dignity is somewhat inconclusive. The child's dignity it is of utmost importance for the implementation of rights and it can be understood in more than one way: from being the highest moral principle to being the actual right of the child. It makes a big difference in the process of implementation; if child's human dignity is a right than there can be a claim to that right. Besides, if the CRC Committee believes that a child's right for the respect of his/her dignity exists, very serious legal implications are possible, including even amending the CRC. Maybe a first step could be organizing a Day of General Discussion on the topic of child dignity and subsequently the adoption of a related General Comments.

So, where does the CRC Committee go from here? What does the CRC Committee really think on the issue of child's human dignity? What will this body do in the future to prove that extensive referrals to child's human dignity in its documents are not mere repetitions of a strong notion? Will it, instead, attempt to produce a 'user's manual,' in a form of a General Comment? The CRC Committee would contribute significantly to this discussion by providing some sort of expert opinion or recommendations. Therefore, the Committee on the Rights of the Child should further address the issue of child dignity and engage in a discussion, initiate a study and even adopt a related General Comment. Such a document would be useful for the States Parties, the children and practitioners worldwide. Moreover, a thorough interpretation of the human dignity of the child would additionally merit the slight gain over disbelievers in child autonomy and contribute to the achievement of better understanding of the importance of fundamental respect for the child as a human being with worth. The rights-based approach to children still has a heavy odor of paternalism and pure protection and that will continue for as long as children are not perceived as human beings with inherent human dignity. Perhaps a 'dignity-based' approach is a missing link on a path towards full implementation of the rights of the child and a change of attitudes that would facilitate an understanding of children as human beings with autonomy, will, integrity and worth.