

The Convention on the Rights of the Child

**From the report of the Committee for the Evaluation of the Basic Rights of Children and the Law, and Their Implementation by Legislation

by Judge Saviona Rotlevy

Introduction

The international Convention on the Rights of the Child (hereinafter "the Convention") is the most extensive and important international document on children's rights to date. The Convention was adopted on 20 November 1989 and entered into force on 2 September 1990. The Convention was signed by Israel on 3 July 1990 and entered into force (after its ratification on 4 August 1991) on 2 November 1991. The unique value of the Convention in the area of children's rights, compared to international documents that preceded it is evident in several aspects:

The legal status of the Convention

The Convention is part of **public** international law. Compared to children's rights declarations which preceded the Convention, the latter obligates States that ratify it. Most nations of the world have signed the Convention, which in and of itself strengthens its international value.

The legal status of the Convention in the Israeli legal system

The Convention was ratified by the Israeli government. This does not, however, make it part of Israeli law. Government ratification obligates the state to obey the Convention's directives, including making the laws of the state compatible with them. At the same time, since the Convention is not part of Israeli law, it is not possible to enforce most of its directives directly in the courts. Such enforcement is possible only if the directives are anchored as law. Until then, the Convention's significance in the courts is as a source of commentary, upon which decisions may be based. In the past years, the Convention has garnered strength in Israel. This is evident in court decisions based on it, led by the Supreme Court, as well as in new legislation pertaining to children.

Implementing the Convention's directives in legislation is the basis of the Committee's appointment, and is its central objective. As mentioned, the Committee was appointed to evaluate the compatibility of Israeli legislation with the Convention, as well as the necessity to update and add new legislation so as to fully implement the Convention's directives.

Contents of the Convention

משרד החינוך
המינהל הפדגוגי
הפיקוח ליישום חוק זכויות התלמיד

The Convention applies to every "child" - defined as "... **every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier**" (Article 1 of the Convention), who is found in the state's jurisdiction (Article 2 of the Convention).

Substantive value of the Convention

The primary value of the Convention is the expression it gives to changes in the view of the status of children in society and of their rights. Fundamentally, the Convention reflects a transition from a protective view to one of rights: in the Convention, the child is considered as a subject possessed of rights, and not as an object.

The rights granted to the child are not granted out of kindness, but as his/her due – by the virtue of being a person and a child. This obligates parents and the state to enable and advance the implementation and realization of these rights.

The premise of the Convention is that the child is an autonomous being, with rights and responsibilities. This is in opposition to the paternalistic outlook accepted until the Convention, which focused on the **protection of children** and on responsibilities toward them, and not on the **protection of their rights**.

The Convention is a comprehensive, coherent document of children's rights. For the first time, children's rights are strongly anchored in one document having obligatory international validity, which should be read and understood as a whole. In the list of rights children enjoy, the Convention included rights which were not recognized in the past as children's rights, citizenship and national rights - and thus was an important message for children.

The rights anchored in the Convention

In general, the rights anchored in the Convention are given to all children, as children and as human beings. They are not endowed upon children because they are citizens, residents or possessed of any other status. The rights included in the Convention may be divided in different ways, including division into citizenship and national rights, such as the right to freedom of expression or the right to privacy, or economic and social rights, such as the right to social security or the right to health and cultural rights.

The rights may also be classified according to those given to children that are also given to adults, and special children's rights, granted because of their (children's) unique characteristics. As to the former – they are anchored with consideration of the unique characteristics of children and, in particular, their developing abilities. This reflected in the way the rights are realized, and sometimes, by their limitations. These considerations are sometimes directly stated in the Convention's directives, and are sometimes derived from the necessity of interpreting it as an holistic document, in which its principles must

be read into each article. Among the rights unique to children can be counted the right to maintain personal relations with parents, the right to develop and the right to an education.

The view of the child as central to the Convention

In the wording of its directives, and in their content, the Convention places the child in the center in decisions, actions and processes affecting his/her life, and even sees things from the child's perspective. In its work, the Committee, like the Convention, tried to see things from the child's perspective, while focusing on his/her best interests. This is expressed in its recommendations.

The responsibilities of the child, together with his/her rights

It should be noted that, despite the great emphasis placed by the Convention and the work of the Committee on children's rights - just as every person does, so children have responsibilities toward others, which are derived from their rights. In contrast to adults, however, the extent and content of a child's responsibility is determined by his/her evolving capacities. The great emphasis placed on children's rights does not detract from their responsibilities. The purpose is to express recognition of their rights, a recognition established only in recent years. They received significant expression in the Convention, and following that, in the Committee's conclusions.

In addition, it is important to clarify that besides recognizing children as possessed of rights, the Convention and the Committee recognize, in their recommendations, the importance of **the right of children to protection**, which is granted to them in a way that is compatible with their development. Therefore, the transition to considerations of their rights should not be viewed as leaving them without necessary protection.

The principles of the Convention

It is customary to relate to four central principles of the Convention:

- the principle of equality (the prohibition of discrimination) – Article 2 of the convention,
- the principle of the best interests of the child – Article 3 of the Convention,
- the principle of life, survival and development – Article 6 of the Convention,
- the principle of the participation of children in decisions affecting their lives – Article 12 of the Convention.

The **principle of the evolving capacities** of the child should also be noted, as set forth in Article 5 of the Convention, reflecting a fundamental concept, important in its application. The Convention also places special emphasis on the **dignity of the child**.

משרד החינוך
המינהל הפדגוגי
הפיקוח ליישום חוק זכויות התלמיד

Because the Convention is an holistic, coherent document, to be read as a complete entity, its principles must be read into each of its Articles, and they must be applied when implementing each of the responsibilities listed in the Convention, and each of the actions taken in accordance with it.

****The Committee (chaired by Judge Saviona Rotlevy) was appointed in 1997 by the Minister of Justice to recommend absorbing into Israeli law the rights enumerated in the Convention on the Rights of the Child. In 2003, it presented its recommendations.**