

The CRC and the elimination of economic exploitation of children

Jaap E. Doek¹

1. Introduction

One hundred and ninety one States recognise the right of the child to be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child health or physical, mental, spiritual, moral or social development (art. 32 (1) CRC). In paragraph 2 of this article the States commit themselves to a variety of measures to ensure this right.

In particular they shall (having regard to the relevant provisions of other international instruments):

- set a minimum age or minimum ages for the admission to employment;
- provide for appropriate regulation of the hours and conditions of employment;
- ensure the effective enforcement of the above provisions via appropriate penalties or sanctions.

Other articles of the CRC are also of immediate relevance for the prevention of and/or the protection of economic exploitation.

- *Article 33*: the prevention of the use of children in the illicit production and trafficking of narcotic drugs and psychotropic substances (as defined in the relevant international treaties);
- *Article 34*: the protection of the child from all forms of sexual exploitation and sexual abuse, including inter alia the exploitative use of children in prostitution and in pornographic performances;
- *Article 35*: the abduction, sale of or traffic in children for any purpose ; that is: including commercial exploitation because children can be abducted or sold for purposes of commercial sexual exploitation;
- *Article 38*: the protection of children under 15 yrs of age by preventing them from being recruited into armed forces and from directly taking part in hostilities.
- In the optional protocol to this article the age limit of 15 has been raised to 18 yrs except for voluntary recruitment which can be lower than 18 yrs. This protocol entered into force on Febr. 12 2002 for the 13 States Parties which ratified so far this protocol.

It goes beyond the scope of this presentation to analyse/interpret in more details the meaning and relationship of these articles, although they may give rise to some questions.² But it seems fair to consider them as the most concrete legal tools within the CRC for addressing the economic (and other forms of) exploitation of children. At the same time: these tools should be used within the broader context of the CRC (the holistic approach), taking into account the provisions of other international instruments (see art. 32 and 33) and the need for bilateral and multilateral co-operation (see art. 34 and 35).

In this contribution I'll focus on this broader context of the CRC, the role of other international instruments and the need for international collaboration. But before doing this let me first

address some possible misunderstandings in relation to the meaning/the interpretation of article 32 CRC.

2. Article 32 CRC: what it does/does not mean

In the domain of “Child Labour” there is an ongoing discussion in which some experts argue at length – referring inter alia to the wide variety of social and cultural contexts – that work performed by children, even at very young ages (between 6-12 yrs of age) is not necessarily bad for their physical, cognitive, emotional or social and moral development. Therefore, a general and universally applicable minimum age for admission to employment or *work* (emphasis added) is presented as questionable (see in this regard article 1 (1) of the ILO Convention 138).³ Without engaging myself in this discussion, let me emphasise what article 32 CRC *does* and *does not* say.

- it provides every child with protection from economic *exploitation* and from performing work likely to be *hazardous*, to interfere (that is negatively affects) with her/his education or to be *harmful* for her/his development;
- it *does not* prevent the child from performing work that does not meet these qualifications;
- it *does require* that a minimum age is *or* minimum ages are set to ensure the implementation of article 32, that is minimum age(s) for admission to employment or any (other) work that is hazardous etc. (see above);⁴
- it *does not require* that *one* age limit is set below which any kind of work performed by children is forbidden;
- it does not require a specific minimum age or ages allowing States Parties to set different age limits depending e.g. on the nature or the conditions of work;
- but it does take into account ILO Convention 138, meaning that the age limits (a general one; one for hazardous work and another one for light work) in that Convention can and should be used as guidelines for States Parties to the CRC which are not (yet party to ILO Convention 138).

3. Article 32 et alia and the CRC’s holistic approach

In 1993 the UN Committee on the Rights of the Child (hereafter: the Committee) devoted its 2nd (annual) discussion day to the economic exploitation of children. In the recommendations which came out of this discussion day the Committee underlined that the rights in the CRC are indivisible and interrelated and that they are all inherent to the human dignity of the child. Each right set forth in the CRC in this case, the right to be protected from economic exploitation, should therefore take into account the implementation of and respect for all the other rights of the child (UN Doc. CRC/c/20). This holistic approach sounds good, almost magical, but what does it actually mean in relation to article 32 and the related articles dealing with economic exploitation?

Let me try to explain and in order to do so, I’ll make a distinction between the provisions which more particularly recognise the child as a subject of rights and those provisions which put child labour in the context of social and economic rights.

3a. The child as subject of rights

If a State Party to the CRC want to address the economic exploitation of children or work that is hazardous and/or otherwise harmful for their development in accordance with the text and

spirit of the CRC, it has to respect the child as a bearer of rights. This means – but is not limited to – the implementation of the general principles of the CRC and the civil rights and freedom as enshrined in the CRC. This contribution does not allow for a full elaboration of the consequences of these general principles (inter alia: non discrimination, best interests and the right to life survival and development) and the civil rights and freedoms. I'll limit myself to briefly presenting (the meaning of) some of these provisions.

Article 12 provide the child with the right (to be assured by the State Party) to express her/his view in all matters affecting her/him. The views shall be given due weight in accordance with the age and maturity of the child. For the exercise of this right the right of freedom of expression is an important support (art. 13 CRC). At the same time, the freedom to seek, receive and impart information and ideas is crucial for any child who wants to form an opinion (art. 13 CRC). A well based opinion will most likely receive more attention than an uninformed view.

All the above rights provide the child with an excellent opportunity to become actively involved in decision making processes relevant to her/him. The child is not only the passive recipient of all kind of services provided to her/him by adults/organisations/the State on the basis of her/his right to inter alia education, health care and protection. In a manner consistent with her/his evolving capacities, the child should be allowed to exercise the rights recognised in the CRC (art. 5 CRC). The right to express well informed views is a very important tool in this regard. It is not enough to pay lip service to the idea that the child is a bearer of rights. We should also recognise and respect her/him as a person who can exercise her/his rights depending on her/his evolving capacities, capacities which normally increase with growing maturity.

For the protection from economic exploitation (including the various forms covered in articles 33-36) this means that a government, which wants to take one or more of the measures mentioned in article 32 CRC, should involve working children by giving them a fair opportunity to express well informed views, views which should be taken into account. In this regard it is not enough just to listen to the children's views. If a government (or any other body in this regard) takes measures which differ from the views of the children, it should explicitly give the reasons for such deviation.

An important instrument for an effective participation of the child in the exercise of her/his right is the right to freedom of association and to freedom of peaceful assembly (art. 15 CRC). It allows in this case the working children to organise themselves and to meet for discussion of their interests vis à vis measures prepared by e.g. the government for the protection from economic exploitation.

This form of organised child participation presents a number of challenges, inter alia the need to avoid "tokenism", to work closely with working children in a non-directive way in order to avoid that they become their master's voice and the democratic representation of working children in national or international fora

But examples in Latin America (Manthoc in Peru), Africa (a newsletter for and by working children) and Asia (India, the Bhirma Sanga Association) show that it is possible to develop effective organisations of working children.

Working children are not only subjects of rights but are also empowered (using the possibilities given to them in article 12, 13 and 15) to actively exercise their rights. What are these rights? The short answer: all the rights recognised in the CRC. But I'll focus on the economic social and cultural rights.

3.b. Economic exploitation and the child's economic, social and cultural rights

Poverty is, without doubt, the root cause of economic exploitation of children, an exploitation which at the same perpetuates poverty. In other words: the best way to prevent the economic exploitation of children is to reduce and eradicate poverty. In legal terms it means: the full implementation of the economic, social and cultural rights of the child. Article 4 CRC requires that States Parties undertake measures to this end "to the maximum extent of their available resources and where needed within the framework of international co-operation".

As far I know there is not (yet) a clear consensus on which provisions of the CRC belong to the category ecosoc rights.⁵ A study in this regard is needed if not only for a more specific interpretation of the meaning of article 4. It is, furthermore, necessary to elaborate on the meaning of "maximum extent" and of "available resources". But this goes beyond the scope of this presentation. I'll limit myself to a reference to a General Comment of the UN Committee on Economic, Social and Cultural Rights: "Even where the available resources are demonstrably inadequate the obligation remains for a State Party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances. Moreover, the obligations to monitor the extent of the realisation, or more especially the non-realisation, of economic, social and cultural rights and to devise strategies and programmes for their promotion, are not in any way eliminated as a result of resource constrains."⁶

Back to the CRC, its holistic approach and the legislative, administrative, social and educational measures a State Party shall take to protect a child from economic exploitation. These measures cannot and should not be limited to the areas mentioned in article 32, para 2 under a-c CRC. In order to meet its obligation to protect children from economic exploitation, the holistic approach requires a State Party to develop a comprehensive policy that inter alia focuses also on the implementation of ecosoc rights. This means that such a policy – e.g. as part of an Poverty Reduction Strategy – should also include measures for the effective implementation of the right of every child

1. to a standard of living adequate for the child's development (art. 27 CRC);
2. to the enjoyment of the highest attainable standard of health and to access to health care services (art. 24 CRC);
3. to education, that is access to free and compulsory primary education of good quality as reflected in the aims of education (art. 28 and 29 CRC).

Other rights (e.g. art. 26 on social security; art. 18, 27(3) the assistance to parents) can be mentioned but it should be clear that children in exercising their right to be protected from economic exploitation should not limit themselves to matters like: minimum age(s), regulations of working hours or working conditions. They can and should insist on more than that and pursue the full implementation of their social, economic and cultural rights. Without that implementation their economic exploitation will most likely continue to exist.

4. ILO-Convention 182

Others will elaborate on ILO's role in stopping economic exploitation of children and particularly its International Programme for the Elimination of Child Labour (IPEC). In this paragraph I like to underline the close link between ILO Convention and the CRC. In paragraph 1 of this contribution I listed the articles which are – next to article 32 – important for combating economic exploitation of children. If one compares the content of the articles 32-26 CRC with, in particular article 3 of the ILO Convention 182 listing the worst forms of child labour, the similarities are remarkable:

- debt bondage; serfdom; forced or compulsory labour; all forms of slavery and any work which will harm the health, safety or morals of children (see art. 32 CRC);

- the procuring or offering of children for production and trafficking of drugs (see art. 33 CRC);
- the use, procuring or offering of children for prostitution and pornography (see art. 34 CRC);
- the sale and trafficking of children (see art. 35 CRC and in conjunction with Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography);
- the forced or compulsory recruitment of child soldiers (see art. 38 CRC and the Optional Protocol on Children in Armed Conflict).

This means at least two things:

- the ILO Convention 182 and the CRC are mutually strengthening the efforts to stop the economic exploitation of children and more in particular the worst forms of child labour. The UN Committee on the Rights of the Child therefore systemically recommends the States Parties to ratify ILO Convention 182;
- the ILO and the CRC should develop a close collaboration with a view to effectively promote the elimination of the worst forms of child labour as listed in the ILO Convention 182 and the articles 32-35 and 38 CRC; this should include inter alia the promotion of the two optional protocols to the CRC and the development of an exchange of information per country in order to make the monitoring by both the ILO and the Committee in this regard as effective as possible. One of the positive effects of this collaboration could be that within the tripartite structure of the ILO (governments, employers, workers) more opportunities are given to working children to express their views and to be more actively involved in the elimination of the worst forms of child labour (in accordance with their rights recognised in the CRC, a convention which is ratified by all States (except USA) which so far ratified ILO Convention 182).

5. International Co-operation

Combating economic exploitation of children in the global economy of to-day requires international co-operation. However, this co-operation is not a matter of well-understood self-interest and/or charity driven generosity. The CRC provides a clear legal basis for such co-operation making it a matter of human rights and an instrument in the realisation of these rights.

Article 4 CRC makes a reference to the international co-operation as a framework in which the implementation of children's rights in general can take place. Other articles (23 on disabled child; 24 on health care and 28 on education) expect States Parties to promote and encourage international co-operation for the (progressive) achievement of the full realisation of these rights. In this co-operation special attention shall be given to the needs of developing countries.

The effects of this right-based co-operation are already visible in the IPEC-ILO activities (donor countries and receiving countries) and so far mostly on a bilateral basis in the fight against commercial sexual exploitation. Other areas of this co-operation are – as expected by the CRC – health and education. But at the same time, much more could and should be done to create an international co-operation and solidarity for the progressive and full implementation of the CRC in order to honour the legal commitment undertaken when ratifying the CRC.

In conclusion

The CRC provides an excellent basis for combating economic exploitation of children. Because:

1st It covers the various forms of economic exploitation, including inter alia commercial sexual exploitation and sale and trafficking of children. This coverage has recently been strengthened by two optional protocols.

2nd It recognises the (working) child as an active participant in the development of policies and programmes for combating economic exploitation, an involvement which can contribute to the effectiveness of those policies and programmes.

3rd It requires an approach which is holistic/comprehensive requiring that actions are developed and implemented in the broader context of respect for and ensuring of the rights of the child, in particular of her/his economic, social and cultural rights.

4th It can and should join hands with the ILO Convention 182 in order to develop a human rights based forceful strategy for the elimination of the worst forms of child labour.

5th It provides a legal basis for the promotion and encouragement of international co-operation.

Notes

¹ Jaap E. Doek is a Law professor at the Vrije University of Amsterdam and the University of Leiden, a deputy justice in the Court of Appeal of Amsterdam and the Chairperson of the UN Committee on the Rights of the Child.

² For instance: article 32 talks about the protection from “economic” exploitation and (emphasis added) any work that is likely to be hazardousetc.”. What is the difference between these two categories? And why does article 34 talks about the “exploitative use” of children in prostitution and pornography? Does this mean that non-exploitative use is possible and permissible? Or: to what extent are the articles 33, 34 and 35 a “lex specialis” in relation to article 32 as the “lex generalis”? And should article 38 be dealt with as part of the topic of child labour? (noting that the term “child labour” is not used in the CRC).

³ See about this discussion inter alia Jo Boyden, Birgitta Ling and William Myers, What works for working children (UNICEF/Rädda Barnen 1998).

⁴ “Employment” is traditionally interpreted as work in a formal labour-contract but there is – taking into account ILO Convention 138 and the ICESCR – to limit the meaning of article 32 (2) (a) CRC to this form of work. See also Sharon Detrick, A Commentary on the United Nations Convention the Rights of the Child, pp. 558-579 (1999 Kluwer Law International/Martinus Nijhoff Publishers; The Hague) and The General Guidelines Regarding the Form and Content of Periodic Reports under Article 44 para 1 (B) CRC, para’s 151-154.

⁵ One could perhaps use The Limburg principles on the implementation of the International Covenant on Economic, Social and Cultural Rights (UN Doc. E/CN.4/1987/17) in which a group elaborated the economic, social and cultural rights set forth in the ICESCR.

⁶ General Comment 3 (on Article 2 (1) of the ICESCR) of the UN Committee on Economic Social and Cultural Rights; see compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies UN Doc. HRI/GEN/1 P.43-47 (1992).