

Law reform and implementation of the CRC

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- “Protecting the World’s Children”, 2007
- “Law Reform and Implementation of the CRC”, 2007
https://www.unicefirc.org/publications/pdf/law_reform_crc_imp.pdf
- “CRC: the study of legal implementation in 12 developed countries”, 2012
<https://www.unicef.org.uk/publications/child-rights-convention-2012-report/>

Vienna Convention on the Law of Treaties

- Art 26: every international treaty in force must be performed by its parties in 'good faith'
- Art 27: makes clear that the obligation to perform international treaties in good faith applies irrespectively of any conflicting domestic law by stipulating that a State Party may not invoke national law provisions as justification for its failure to perform a treaty.

CRC

- Art 2: it is the basic obligation of the State Parties to the CRC to ‘respect’ and ‘ensure’ all rights set forth in the Convention to each child within their jurisdiction.
- Art 4: State Parties are under a duty to undertake “all appropriate legislative, administrative and other measures” for the implementation of the rights recognised in the CRC. As regards the ESCR recognised in the CRC, the State Parties shall undertake such measures to the maximum extent of their available resources.

Art 4

- The CRC has adopted a broad and flexible implementation approach which – in principle – does not stipulate any specific means by which the CRC has to be implemented into the domestic legal order.
- Nevertheless, while emphasizing that there is no favoured legislative or administrative model for implementing the CRC, the UNCRC has developed certain implementation standards.

Approaches to law reform

- Nearly all of the countries studied have made substantial changes in their legislation to better protect the rights of children. These changes have been adopted in varying ways. Some countries have enacted new 'comprehensive laws' or children's codes. The adoption of comprehensive laws is more common, and has occurred in all parts of the world. However, the prevailing trend has been what can be called the 'sectoral approach' to law reform, that is, gradually examining legislation concerning different areas in order to identify and make the changes needed to bring existing legislation into conformity with the CRC.

Approaches to law reform

- Each of these approaches – except those that neglect law reform – has its merits. None is sufficient in and of itself. The gradual reform of existing legislation tends to focus on specific areas, such as child protection, the family and juvenile justice. Accordingly, some of the rights recognized by the CRC are omitted from the law reform process.
- On the other hand, the adoption of codes without an effort to identify and modify conflicting provisions of ordinary legislation, and without the adoption of regulations that provide public servants with guidance as to how the law should be applied in practice, can undermine the effectiveness of a new code.

Summing up

- The implementation of the CRC can only be regarded effective if two requirements are fulfilled:
 - 1. The domestic legislation has to be in full compliance with the Convention.
 - 2. The Convention must be given legal effect, which includes the need for effective remedies.