

# **THE CONVENTION ON THE RIGHTS OF THE CHILD AT 25: THEORY, REALITY, IDEOLOGY, OPPORTUNITY – A TRIO REVIEW**

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## SUMMARY

The Convention on the Rights of the Child (CRC) was adopted by the United Nations on November 20, 1989, and it came into force on September 2, 1990. Twenty-five years later, after Somalia's ratification in October 2015, the CRC is a binding human rights treaty for all UN member states except one: the USA. All member states of the Council of Europe and of the European Union are included in the world's mission to advance the rights of children. However, also in Europe's high-income states violence against children (child abuse and neglect), prejudice against children (seeing children as the property of their parents and not as people with rights), and discrimination against children (unequal protection under the law) still abound. Both governmental and non-governmental actors and activists appear to be little aware of the nature and scope of violence, prejudice and discrimination against children. This makes the task – and duty – to reduce violence against children, and to advance their social and legal position, an extremely challenging one. Is it possible to speed up progress – after 25 years? In this contribution a TRIO perspective is presented to address this complex question. TRIO is the acronym for Theory, Reality, Ideology, and Opportunity.

### 1 INTRODUCTION: A TRIO PERSPECTIVE

The Convention on the Rights of the Child (CRC) was adopted by the General Assembly of the United Nations (UN) on November 20, 1989, and – after it had been ratified by 20 states – it came into force on September 2, 1990. Twenty-five years later, after Somalia's ratification in October 2015, the CRC is a binding human rights treaty for all UN member states except one: the USA. This means that as of November 2015 all UN member states except the USA have to report their progress in implementing the human rights of children to the Committee on the Rights of the Child in Geneva, the expert treaty body of the CRC. All 47 member states of the Council of Europe and all 28 member states of the European Union are included in the world's mission to advance the rights of children. However, all over Europe, also in Europe's high-income states, violence against children (child abuse and neglect), prejudice against children (seeing children as the property of their parents and not as people with rights), and discrimination against children (unequal protection under the law) still abound. Many national and international civil society organizations also report to the Geneva Committee, on a voluntary basis, but both governmental and non-governmental actors and activists appear to be little aware of the nature and scope of violence, prejudice and discrimination against children, making the task – and duty – to reduce violence against children, and to advance their social and legal position, an extremely challenging – and often rather frustrating – one. Is it possible to speed up progress – after 25 years? In this contribution a TRIO perspective is presented to address this complex question. TRIO is the acronym for Theory, Reality, Ideology, Opportunity. Let us have a closer look at these four elements of children's rights before attempting a summarized TRIO review in the conclusion.

## 2 THEORY: THE BIG FIVE DEVELOPMENTAL NEEDS AND TEN THEORETICAL RIGHTS

### 2.1 Schema Therapy Theory: The Big Five Developmental Needs

The Convention on the Rights of the Child is the only UN human rights treaty that mentions the word 'love.' The preamble states that each child should grow up in an atmosphere of happiness, love and understanding.<sup>1</sup> Love – affection, nurturing, intensive sensitive interaction – is the basis for attachment security and the first of the Big Five basic emotional needs that must be met to ensure a healthy development from infancy to adulthood.

The other four basic emotional developmental needs are:

- Limits setting: boundaries, rules, structure (after infancy).
- Respect for the freedom of the infant and older child to express his or her needs and feelings.
- Learning (after infancy): the child being given his or her own responsibilities; demands and expectations that contribute to the development of competence, identity and autonomy.
- Play and spontaneity.

These Big Five stem from the theory that underlies Schema Therapy. This type of therapy is even achieving success with psychopaths, who were considered untreatable for a long time.<sup>2</sup> The Big Five are like the fingers that together form the hand that we must reach out to children. The thumb represents Love; the forefinger Limits; the middle finger (yes, that one, but not put up!) Respect; the ring finger Learning, and the little finger Play.

The Big Five also have a strong empirical basis in the science of Early Childhood.<sup>3</sup> If the Big Five of developmental needs have not been adequately met, from early childhood onwards, this has lifelong consequences for physical health, psychological and emotional well-being, intimate relationships, raising one's own children, work and other contributions to society. If the Big Five have not been met this underlies addiction, chronic medical and psychological afflictions, an unhealthy or even dangerous lifestyle, welfare dependency, depression, and suicidality more often than we imagine. But unmet developmental needs also often underlie antisocial behaviour such as sowing hatred, violence and crime. We are hence, rightly, talking about ACEs: Adverse Childhood Experiences.<sup>4</sup> We have gained more knowledge about this theme over the past decades, and with this knowledge a responsibility has arisen that can no longer be denied or avoided.

The Big Five are guaranteed in several interrelated provisions of the CRC and in particular in the convention principles on the prioritization of the best interests of the child and his or her healthy development, non-discrimination, and participation: the child's right to be seen *and* heard (respectively articles 3, 6, 2, and 12 CRC).

### 2.2 Prepared, informed, assisted and supported parenthood: Ten Theoretical Rights

On the basis of the Big Five developmental needs and the normative framework of the CRC, that is, a holistic interpretation of children's human

rights, a tentative list of Ten Theoretical Rights can be drawn up, the aim of which is to guarantee that children have caregivers who have the competence and means to meet their basic developmental needs. These Ten Theoretical Rights are sub-rights or elements of one fundamental right: the right of the child to prepared, informed, assisted and supported parenthood; simply put: the right of every human being to have competent caregivers at one's cradle.

**– Before conception or at least before or at the child's birth:**

- 1** The right to have caregivers with 'enough' empathy. This right implies prenatal care and protection, that is, the provision of therapy, counseling or other forms of support for parents-to-be with sub-optimal empathy, and protection measures, such as guidance for parents-to-be and prenatal adoption arrangements, including judicial involvement, when adequate empathy is lacking (see sub 5 below). Empathy refers to other-responsiveness in general and infant- and child-responsiveness in particular. For our purposes, three empathy levels in parents-to-be may be discerned:<sup>5</sup>
  - a empathy level 1 ('not enough'): none to minimal empathy, for instance in the case of psychopathy, unresolved and irreparable childhood trauma of the parent-to-be, or other conditions or afflictions that make critical self-reflection and introspection virtually impossible;
  - b empathy level 2 ('potentially enough'): conditional or partial empathy, for instance in the case of addictions, personality disorders, unresolved (highly insecure, post-traumatic) adult attachment, or other conditions or afflictions that cause or coincide with severe egocentrism, but which are reparable, before the child is born, through therapy, counseling or other forms of support;
  - c empathy level 3 ('enough'): sensitive and responsive empathy, that is, adequate mental health and emotional stability.
- 2** The right to have caregivers with 'enough' relational skills. This right implies the provision of therapy,<sup>6</sup> counseling and/or relationship education for parents-to-be.
- 3** The right to have caregivers with 'enough' childrearing skills. This right implies the provision of therapy, counseling and/or parenting education for parents-to-be and new parents ('building adult capabilities to improve child outcomes'<sup>7</sup>).

**– During pregnancy:**

- 4** The right to prenatal care and protection, especially from alcohol, smoking and other toxic substances, or levels of toxic stress.<sup>8</sup>
- 5** The right to prenatal childrearing arrangements and prenatal child protection measures, such as prenationally arranged adoption by family members or others, in cases where the parents cannot take care of the child themselves (see point 1 above).

**– During infancy:**

- 6** The right to intensive intimate (sensitive and responsive) interaction, preferably including breastfeeding, to be facilitated by the state, employers, etc.<sup>9</sup>
- 7** The right to paid parental leave for both parents.<sup>10</sup>

### – During toddlerhood:

- 8 The right to limit setting, that is, to non-violent ‘positive parenting’ (as defined by the Council of Europe, see section 3.2 sub 8 below).
- 9 The right to pre-school contact with peers, that is, to (free) high-quality childcare.

### – School age:

- 10 The right to participation, personality development, and preparation for a responsible life in primary and secondary education. Articles 12 and 29 CRC, read together, provide for the three P’s for schools: Participation, Personality development, and Preparation for responsible life as a citizen – and *thus* also for becoming a parent in the future. School curricula should therefore include:
  - PSHE – Personal, Social, Health and Economic education.<sup>11</sup>
  - HRCE – Human Rights and Citizenship Education; or EDC/HRE – Education for Democratic Citizenship and Human Rights Education.<sup>12</sup>
  - CRPE – Children’s Rights and Parenthood Education; or CRE/ERP – Child Rights Education and Education for Responsible Parenthood.<sup>13</sup>

## 3 REALITY: FACING FIVE REALITIES AND TEN INTERNATIONAL DEVELOPMENTS

### 3.1 Three ‘facts of life’ and two ‘human rights fundamentals’: Facing Five Realities

The Ten Theoretical Rights in section 2.2 above are not only based on the Big Five developmental needs from Schema Therapy Theory but also on facing the Five Realities, that is, three ‘facts of life’ (realities *de facto*) and two normative realities or ‘human rights fundamentals’: substantive and procedural core values and fundamental principles of international human rights law (realities *de jure*).

Let us have a brief look at these Five Realities before turning to the ‘real world’ of international developments in the legally binding history of children’s rights over the past 25 years.

#### – Facing three ‘facts of life’:

- 1 All parents need information and education on child development, caring for babies and childrearing (see articles 18.2 and 24.2 CRC), as well as assistance and support (see articles 18.3 and 27.3 CRC). You need more than one or two parents to raise a child, ‘it takes a village’: family, a social network, community, school, and society.
- 2 Some parents need specific support, related to specific stressors such as their own unresolved childhood trauma (see article 19.2 CRC, read together with article 39 CRC).
- 3 A small percentage of parents are manifestly unfit to (take care of themselves let alone) raise a child. Putting or leaving a child in their ‘care’ would amount to inhuman and degrading treatment of the child (see article 37a CRC and article 3 of the European Convention on Human Rights).

### – Facing two ‘human rights fundamentals’:

- 4 Everyone is a subject of rights and not the property of others, more specifically, no one has automatic rights over others, simply because they are white: slavery has been abolished; male: patriarchy violates women’s rights; or ... have given birth: ‘parentarchy’ violates children’s rights. Parentarchy refers to the post-patriarchal culture in which women and children are no longer seen or treated as property of husbands and fathers, but children are still seen or treated as property of parents. However, we are still in denial of our prejudice against children in this regard (see section 4.1 below).
- 5 The implementation of substantive human rights principles such as inclusion or universality, equal dignity and non-discrimination, more specifically those mentioned in point 4 above, has to be based on and guided by the seven fundamental procedural principles for which the FAO, the Food and Agriculture Organization of the UN, devised the acronym PANTHER. According to the FAO:<sup>14</sup>

‘As for process, a rights-based perspective requires decision-making processes (from policy formulation to law-making down to administrative acts) to comply with the seven important PANTHER principles: Participation, Accountability, Non-discrimination, Transparency, Human dignity, Empowerment and [the] Rule of law.’

Although the FAO relates these PANTHER principles to the right to food and food security, their scope of application should be seen as much broader, covering the implementation of all fundamental human rights.<sup>15</sup> With regard to parents and professionals or institutions working with parents and children two principles are especially relevant. They form two sides of the same coin: accountability, that is, ‘responsibilization’ (creating legal duties and responsibilities), and empowerment. If the law creates duties, such as parental and professional responsibilities, governments also have to provide the means to fulfill these, that is, to empower the duty-bearers they have created, through information, training, education, financial means and other forms of assistance and support. The legal duty not to hit children, for instance, creates first of all an obligation for states to inform and empower parents and professionals in non-violent, so-called ‘positive parenting’ (see section 3.2 below).

### 3.2 On the global and European level: Ten International Developments

Substantial progress with regard to children’s human rights is only possible on the basis of fully acknowledging the Five Realities we have just seen. Let us not jump to conclusions, however, and first take a look at Ten International Developments which have taken place since the CRC came into force in 1990.

- 1 Ghana was the first state to ratify the CRC, on 5 February 1990. Bangladesh, Benin and Sudan ratified the Convention on 3 August 1990, bringing the total number of ratifications on that date to over twenty (22 to be exact), which enabled the CRC to come into force 30 days later, on 2 September 1990.<sup>16</sup> Somalia ratified the CRC on 1 October 2015, making the USA the only state left to have not ratified the Convention.<sup>17</sup> The USA signed the CRC on 16 February 1995, but no president since then has sent the CRC to the US Senate for approval. Without the consent of a two-thirds majority of

- the Senate, the US president cannot ratify a convention.<sup>18</sup> Apart from 192 of 193 UN member states there are four other parties (who have ratified or acceded) to the CRC: the Cook Islands, Niue, Palestine and the Holy See (the Vatican). With a total of 196 parties, the CRC is the most widely ratified human rights treaty in the world.<sup>19</sup>
- 2 Interestingly, although not a state party to the CRC itself, the USA is a state party to two Optional Protocols to the CRC (both adopted by the General Assembly of the UN in 2000): the Optional Protocol to the CRC on the involvement of children in armed conflict and the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography. Respectively 161 and 170 other states are also parties to (and thus bound by) these Protocols.<sup>20</sup>
  - 3 In 2011, the General Assembly of the UN adopted a third Optional Protocol to the CRC: the Optional Protocol to the CRC on a communications procedure, which came into force on 14 April 2014 (24 parties as at 25 January 2016, including ten EU member states: Belgium, Czech Republic, Denmark, Finland, France, Germany, Ireland, Portugal, Slovakia and Spain).<sup>21</sup> This ended the situation where the CRC was the only UN human rights treaty without an individual complaint procedure. In one in three countries in the EU, children, or others on their behalf, can now sue the state where they live for violations of their rights after available national remedies have been exhausted.<sup>22</sup>
  - 4 The Committee on the Rights of the Child not only monitors the CRC's implementation by states (except the USA) but 'also publishes its interpretation of the content of human rights provisions, known as General Comments on thematic issues.'<sup>23</sup> The first of these General Comments (on the Aims of education) was published in 2001, the latest one (no. 18 on Harmful practices) in 2014.<sup>24</sup> Two more are in preparation, one on Public spending and the rights of the child (no. 19, draft version 2015),<sup>25</sup> and one on the Rights of adolescents.<sup>26</sup>

Some other important General Comments are:<sup>27</sup>

- no. 7 (2005) on Early childhood;
  - no. 8 (2006) on Corporal punishment;
  - no. 12 (2009) on Participation;
  - no. 13 (2011) on Child abuse and neglect;
  - no. 14 (2013) on The best interests of the child;
  - no. 15 (2013) on Children's right to health;
  - no. 17 (2013) on Children's right to play.
- 5 In 2006, the UN Secretary-General's Study on Violence against Children was published,<sup>28</sup> putting violence against children on the international agenda thirteen years after the UN General Assembly adopted the Declaration on the Elimination of Violence against Women in 1993.<sup>29</sup>
  - 6 In 2009, a Special Representative of the Secretary General on Violence against Children (SRSG) was appointed,<sup>30</sup> fifteen years after the UN Human Rights Commission (the predecessor of the Human Rights Council) created the post of Special Rapporteur on Violence against Women in 1994.<sup>31</sup>
  - 7 In December 2015, the Global Initiative to End All Corporal Punishment of Children announced on its website:<sup>32</sup>

‘Global progress towards achieving prohibition of all corporal punishment of children in all settings is accelerating worldwide, particularly in the context of follow up to the UN Study on Violence Against Children. As at December 2015, 48 states have achieved prohibition of corporal punishment in all settings, including the home; a further 52 states are committed to achieving a complete legal ban.’

- 8** In 2006, the Committee of Ministers of the Council of Europe adopted a recommendation to its 47 member states on policy to support positive parenting. In the appendix to this recommendation, positive parenting is defined as:<sup>33</sup>

‘parental behaviour based on the best interests of the child that is nurturing, empowering, non-violent and provides recognition and guidance which involves setting of boundaries to enable the full development of the child.’

The Big Five developmental needs (see above section 2.1) appear to be (almost) fully included in this definition: based on the best interests of the child and nurturing (love), non-violent setting of boundaries (limits), empowering and providing recognition (respect), and providing guidance to enable the full development of the child (learning). Only play is not mentioned but could be read into some of the terms of the definition (empowering, full development, best interests of the child). The Committee of Ministers recommends that:<sup>34</sup>

‘the governments of member states (...) create the necessary conditions for positive parenting [and] take all appropriate legislative, administrative, financial and other measures adhering to the principles set out in the appendix to this recommendation.’

- 9** In 2007 and 2011, respectively, the Council of Europe adopted two important conventions:<sup>35</sup> the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the 2007 Lanzarote convention, which came into force in 2010),<sup>36</sup> and the Council of Europe Convention on preventing and combating violence against women and domestic violence (the 2011 Istanbul convention, which came into force in 2014).<sup>37</sup>
- 10** The 28 member states of the European Union are bound by the EU Charter of Fundamental Rights. In 2009, with the coming into force of the Treaty of Lisbon, the EU Charter, which was solemnly proclaimed at the Nice European Council on 7 December 2000, became legally binding for EU institutions and national governments.<sup>38</sup> To conclude our list of Ten International Developments, mention should also be made of article 24 of the EU Charter (on the rights of the child):<sup>39</sup>
- 1** Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
  - 2** In all actions relating to children, whether taken by public authorities or private institutions, the child’s best interests must be a primary consideration.
  - 3** Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.



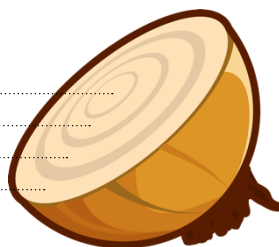
## 4 IDEOLOGY: FIVE PREJUDICE CONCEPTS AND TEN CHILD ABUSE DENIALISMS

### 4.1 Juvism, childism, parentarchy, transism, adultism: Five Prejudice Concepts<sup>40</sup>

Since 1990, children's status as subjects of rights has become part of international law. However, until today, national child protection systems still operate as if children are objects of charity and protection, without a voice and a personality, and rights, of their own.<sup>41</sup> Family law still grants automatic parental rights at birth, or near automatic contact rights after divorce, as if children were the property of their parents. But also international law does not yet fully acknowledge their status and plight. Although violence against women, as a large-scale, serious and structural human rights violation, is seen as discrimination against women, violence against children, which is as much of a large-scale, serious and structural human rights violation, is not seen as discrimination against children, that is, against children as an age group of human beings. Several terms have been proposed in academic literature to label prejudice and discrimination against children: *childism*; *parentarchy*; transgenerational discrimination, or (in shortened form) *transism*; juvenile ageism, or (in shortened form) *juvism*; and *adultism*. None of these terms are familiar, however, or even known, outside of limited academic circles. But also in the West, violence against children, labeled *child abuse and neglect* or *child maltreatment*, remains a large-scale and structural violation of fundamental human rights. In a chapter of a book, which is due to be published in early 2016 (and online later that year), the present author proposes the model of the juvism onion.<sup>42</sup> According to this model (see diagram),

#### The JUVISM onion

Inner onion: CHILDISM .....  
First layer: PARENTIARCHY .....  
Second layer: TRANSISM .....  
Third (outer) layer: ADULTISM .....



- *juvism* (juvenile ageism) is the overarching term for prejudice (seeing children as property of parents and not as people with rights) and discrimination (unequal protection under the law) against children (the whole onion);
- *childism* refers to parents and other carers who treat the children in their care as personal property (the inner onion);
- *parentarchy* refers to the post-patriarchal culture in which women and children are no longer seen or treated as the property of husbands and fathers, but children, especially newborns and the very young, are seen or treated as the property of their parents (the layer surrounding the onion's core);
- *transism* (transgenerational discrimination) refers to the perpetuation of transgenerational cycles of trauma and maltreatment in families caused by institutional prejudice and discrimination, more specifically the way in which the child protection system sees or treats children – on the basis

- of traditional and legalistic rather than science-based interpretations of ‘the best interests of the child’ – as the property of their parents (the layer surrounding parentarchy);
- and *adultism* is the term used to denote prejudice against children in academic literature and research; it refers to adults, specifically researchers, who give attention to adults (particularly to mothers and/or fathers) while overlooking children (especially newborns and the very young) and ‘denying’ their predicament, and the pain or harm that they suffer (the outer layer of the onion).

In contrast to racism and sexism, which are being acknowledged and addressed, most of us are still in denial in relation to juvism and its onion-like layers (adultism, transism, parentarchy) and to childism at its core.<sup>43</sup> In the above-mentioned book chapter, this denial of juvism is analyzed and ten child abuse denials are exposed. These ten denials will be briefly listed in the following section.

## 4.2 Ten Child Abuse Denials

Large-scale serious violations of children’s fundamental human rights, also in Western states, are not acknowledged as such, and their causes and consequences are denied, overlooked or minimized. In this section, ten ‘denials’ will be listed with regard to: what do we consider child abuse, that is, child abuse and neglect, or child maltreatment, to be (its scope or definition: denialism 1); its scale (the number of victims: denialism 2); its seriousness (its harmfulness or consequences: denialism 3); its structural character (denialisms 4 to 9); and the lack of human rights research relating to, or including, child abuse as a violation of fundamental rights (denialism 10). In other words, all the elements of child abuse and neglect (that is, its scope or definition) as a large-scale, serious and structural human rights violation (to be researched as such) are included. Thus, the following Ten Child Abuse Denials can be discerned:<sup>44</sup>

- Denialism 1. Excluding many forms of preventable damage by carers from what one considers child maltreatment to be,<sup>45</sup> may be seen as a form of child abuse denialism.
- Denialism 2. The systematic underestimation of the scale of child maltreatment.<sup>46</sup>
- Denialism 3. Ignoring or outright denial of the harmful consequences of child abuse and neglect.<sup>47</sup>
- Denialism 4. *The love myth*: that all parents automatically are attached to and love their children is a myth and a denial of parental envy, hatred or self-infatuation.
- Denialism 5. *The blood-tie myth*: professionals who interpret ‘the best interests of the child’ as implying that being or staying with his or her parents, or having contact with both of them upon their separation or divorce, is almost by definition beneficial to a child’s development, belong to the group of believers in the ‘blood-tie myth’: they are in denial of attachment security as a basic need (see section 2.1 and section 4.1 on *transism* above), in spite of all the scientific evidence to the contrary.<sup>48</sup>
- Denialism 6. *The resilience myth*. Denial of children’s vulnerability to trauma often takes the form of what may be called the resilience myth.<sup>49</sup>

- Denialism 7. *The child protection myth*. Child protections systems have existed for over a century in Western states. The child protection myth concerns the denial of the structural failure of these systems to effectively protect children (see section 5.1 below).
- Denialism 8. *Immunity and impunity denial*. Several traditional practices amount to parental privileges that are harmful to children and contribute to large-scale violations of children’s fundamental human rights. Ten examples of adult privileges are:<sup>50</sup>
  - 1 Unprepared parenthood or automatic parental rights privilege (see above section 4.1).
  - 2 Toxic pregnancy privilege, e.g., smoking and alcohol abuse during pregnancy.
  - 3 Privacy privilege: privacy in the home as almost the exclusive right of adults, that is, not including children’s personal integrity as privacy’s first or core requirement.
  - 4 Corporal punishment (‘reasonable chastisement’) privilege (it is still legal for parents to hit and humiliate their children in three out of four UN member states, and in eight EU member states<sup>51</sup>).
  - 5 Circumcision of (baby) boys privilege.
  - 6 Non-immunization of children (non-vaccination) privilege.
  - 7 Not sending your child to school privilege (home schooling privilege), depriving a child, *inter alia*, of peer contact.
  - 8 Smoking near a child privilege (gradually being challenged in some states).
  - 9 Inappropriate baby naming privilege.
  - 10 Deprivation of identity privilege, through IVF (in vitro fertilization) and other techniques with anonymous donors.

These adult privileges may be explicitly legal under national law or may not lead to prosecution even if children are seriously harmed. This unequal protection under the law is often not acknowledged, thus constituting what may be labeled immunity or impunity denial.

- Denialism 9. *Unfitness denial (the myth of automatic competence)*. Automatic parental rights and being unprepared for parenthood are two sides of the same coin. They go hand in hand with the denial of the absolute incompetence of manifestly unfit parents, particularly in cases of serious psychopathy or other psycho(patho)logical conditions where adults lack the capacities of empathy and critical self-reflection or introspection. This ‘unfitness denial’ stems from the myth that giving birth to a child automatically implies parental competence.
- Denialism 10. *Denial in human and children’s rights research*. Newborn persons (infants, preschoolers) are possibly the last category of human beings who are not fully included in human rights discourse and research. The virtual exclusion of newborns may explain why neither infant attachment security nor the right of newborn babies to have prepared and competent parents, including a right to be adopted at birth when parents are manifestly unfit, are seen, analyzed and advocated as fundamental human rights – in spite of all the rhetoric on children’s rights.

## 5 OPPORTUNITY: THE BIG FIVE OF SMECC AND TEN STAGES OF HUMAN RIGHTS IMPLEMENTATION

### 5.1 A systematic approach to prevention: The Big Five of SMECC

As Gertrud Lenzer, founding director of the Children's Studies Center at Brooklyn College, observed:<sup>52</sup>

'Despite the generally accepted child-friendly attitudes in society and the claim that children are the future, the most astonishing phenomenon is the general invisibility of children in our societies. This invisibility is joined by a widely held sentiment that children are really inferior and do not matter. This attitude is so well camouflaged by the ostensible interest in children and like all stereotypes and prejudices incredibly difficult to bring into the open and challenge it.'

Amongst the most invisible children are those who are maltreated behind closed doors, especially in the early years. According to a study in the *Lancet's* Series on Child Maltreatment, one in ten children in high income countries is maltreated 'but only a tenth of these are investigated and even fewer removed from danger.'<sup>53</sup> Those – relatively few – children who are 'removed from danger' are likely to face new forms of harm, however, through repeated changes in alternative care placement or through placement in institutions. It has been submitted in several publications by the present author that this harmful and ineffective bureaucratic tradition of post-harm intervention in families is related to, if not caused by, family law's granting of automatic parental rights when the child is born. Prenatal care and protection should be the rule, not the exception.

A paradigm shift is needed from post-harm family intervention to a structural preventative approach on the basis of Prepared Parenthood, that is, a comprehensive so-called SMECC approach, including a minimum normative standard for parental competency in family law. The acronym SMECC refers to an integrated Big Five of *child rights based* child and family laws and policies:<sup>54</sup>

- **School** child rights and parenthood education (see section 2.2 sub 10 above);
- a legal **Minimum** standard for competent parenthood in family law (the legal prohibition of 'unprepared parenthood,' comparable to the norm that prohibits hitting and humiliating children, the so-called hitting ban; see above section 2.2 sub 1 and section 3.2 sub 7);
- child rights and parenting **Education** for parents-to-be (see above section 2.2 sub 2 and 3);
- **Child- and family-friendly** social and economic policies (see several of the rights listed in section 2.2 above);
- a high-quality professional **Continuum of care** for children and families (see section 2.2 above, several rights).

### 5.2 Ten Stages of Human Rights Implementation

Research-based advocacy is crucial for the implementation of human rights in general and children's human rights in particular, as will be illustrated on the

basis of a model of the stages of human rights law presented in this section. This model consists of the following (partially overlapping) Ten Stages of Human Rights Implementation, progressing from denialism to principles and, ultimately, practice:<sup>55</sup>

Stage 1. *Denialism*: systematic, that is, personal, cultural, institutional and academic denial – through rationalization, myopic ignorance, turning a blind eye, a conspiracy of silence, self-deception, etc.<sup>56</sup> – with regard to serious and large-scale human rights violations. This stage may continue even after fundamental principles have been proclaimed or even have become law – such as those of 1776 (the Declaration of Independence): *all men are created equal*; 1789 (Déclaration des droits de l'homme): *liberté, égalité, fraternité*; 1945 (UN Charter): *equal rights of men and women*; 1945-present: *human dignity, inclusion, freedoms*; 1989 (CRC): *dignity and best interests of the child*. However, on the basis of these principles, early critiques were voiced by academic pioneers and human rights heroes and advocates. A modern-day example is the systematic violation of children's rights that takes place in the home, including in the West (denial of 'juvism').

Stage 2. *Awareness-raising (level 1)*: growing awareness of suffering and suppression (exclusion) of vulnerable individuals, groups or minorities (blacks, Jews, women, homosexuals, children). In this stage we see expanding other-responsiveness and growing compassion. For instance by non-governmental organizations (NGOs) working with 'experts of experience' (survivors of childhood trauma) and bringing survivors' stories of trauma, coping and recovery into the open, such as is done, in the Netherlands, by the Hidden Violence Foundation (*Stichting Geheim Geweld*).

Stage 3. *Awareness-raising (level 2)*: growing awareness of the underlying prejudice (that people are seen as objects, property, inferior beings) and discrimination (people treated as objects, property, inferior beings). During this stage we see the introduction of concepts such as racism, antisemitism, sexism (and their opposites: feminism and womanism), homophobia; as well as a growing level of insight and indignation, or even public outrage. In relation to children's rights, we see the academic introduction of concepts such as: *adulthood* and *adult(o)centrism* (see Wikipedia); *parentarchy* (Willems 1992); *juvism* (Willems 2013), (short for) *juvenile ageism* (Jack Westman 1994, 2013); *childism* (as *prejudice*: Elisabeth Young-Bruehl 2012; as *emancipation*: John Wall 2010); *transism* (Willems 2000), (short for) *transgenerational discrimination* (Willems 1998).

Stage 4. *Advocacy*: research and rights based advocacy by academic pioneers and human rights heroes. To give some examples: Vincent Felitti,<sup>57</sup> co-founder of the ACE Study<sup>58</sup>; Jane Ellen Stevens, founder of ACEs Too High<sup>59</sup> and ACEs Connection Network<sup>60</sup>; Nadine Burke Harris,<sup>61</sup> founder of the Center for Youth Wellness<sup>62</sup>; Jack Shonkoff, founder of the Center on the Developing Child of Harvard University<sup>63</sup>; Barbara Nicholson and Lysa Parker, founders of Attachment Parenting International (API)<sup>64</sup>; Kerby Alvy's National Effective Parenting Initiative (NEPI)<sup>65</sup>; John Wall (*Ethics in Light of Childhood* 2010); James Dwyer (*Moral Status and Human Life* 2011); Jack Westman (*Parent Power* 2013).

Stage 5. *Alignment*: new NGOs or open-minded established NGOs and professional organizations embark on a new agenda and initiate awareness campaigns, advocacy, networking, schooling, etc., such as, in the US, several of the NGOs mentioned above (stage 4), and in the EU, the Alliance for Childhood European Network Group (AFC-ENG) and its work for the Working Group on the Quality of Childhood (QoC) at the European Parliament.<sup>66</sup>

Stage 6. *Activism*: NGOs initiate social, political and legal forms of activism, using existing channels and opportunities and creating new ones. For instance through demonstrations, petitions, bringing litigation to national courts and international (treaty) bodies; or through developing and propagating new strategies or instruments, such as the 70/30 campaign by the WAVE Trust 'to reduce child maltreatment in the UK by at least 70% by 2030,'<sup>67</sup> and the Child Rights Checklist and other initiatives of the *KinderrechtenNU* (Child Rights Now) foundation in the Netherlands.<sup>68</sup>

Stage 7. *Alternatives*: academics, professionals and human rights activists propose alternatives. For instance, in relation to juvism, abolition of corporal punishment in combination with information campaigns and parenting education (UN, Council of Europe); introduction of an upbringing or parenting pledge (Hans Van Crombrugge 2008)<sup>69</sup>; proposals for a parenthood pledge in combination with minimum standards for (exercising) parental responsibilities (Mark Vopat 2007<sup>70</sup>; Jack Westman 2013<sup>71</sup> and Wisconsin Cares, Inc.<sup>72</sup>); the proposal of a minimum standard of parental competence as a normative linchpin for a comprehensive structural preventative approach (SMECC, Willems 2012); proposals for parent licensing and for the abolition of automatic parental rights (Hugh LaFollette 2010<sup>73</sup>).

Stage 8. *Politicization*: structural human rights violations, their human, social and economic costs, and alternatives (finally) appear on political agendas and in the programmes of political parties. To name a few dawning possibilities (which for some people may seem daunting): support for and training in breastfeeding? A smoking ban in the home? A ban on the circumcision of (baby) boys? Mandatory vaccinations (before starting school)? The prohibition of (harmful) religious or sectarian indoctrination in schools? And in other places where children are present? A foetus to be considered a child as long as the pregnant woman wants to give birth (from conception, or later)?

Stage 9. *Implementation (level 1)*: introduction of new national policies and legislation. For instance, a ban on hitting and humiliating children in the home: a full ban now exists in 20 EU member states, but without mandatory or universal parent education on non-violent discipline (positive parenting). This will need to include education on shaken baby syndrome because, for example, even in the Netherlands more than one in twenty parents still hit or shake their babies.<sup>74</sup>

Stage 10. *Implementation (level 2)*: as national (case) law develops, human rights pioneers ('*what should we do?*') make place for legal positivists ('*what is the law?*'). For instance this has occurred in the regulation of abortion; child care centres; compulsory (school) education and mandatory school attendance; the prohibition of corporal punishment in schools, in

the workplace, in the juvenile justice system, and in youth care institutions; (mandatory) child abuse reporting laws; court ordered (prenatal) child protection orders (terminating parental rights); the abolition of the ‘reasonable chastisement’ exception in criminal law; legal age limits for drinking, driving, smoking, voting, medical consent, marriage, etc.; the criminalization of female (girl) genital mutilation; the constitutionalization of child rights (principles), etc. Later in this stage, as national rules may become overly technocratic and bureaucratic, human rights principles may again be invoked by ‘*what should we do*’-lawyers.

## **6 CONCLUSION: A TRIO REVIEW**

We now have all four TRIO elements – Theory, Reality, Ideology, and Opportunity – in place to attempt a brief TRIO review.

The ten theoretical rights in section 2.2, based on the big five developmental needs in section 2.1, are still largely exactly that: theoretical. Of the five realities in section 3.1, only the first two – all parents need information, education, assistance and support; and some parents need specific support – are more or less acknowledged, especially thanks to the international developments, listed in section 3.2, that relate to positive parenting. However, the most outstanding of these international ‘positive parenting’ developments is the 2006 Council of Europe recommendation on policy to support positive parenting, which is still exactly that: a – non binding – recommendation.

The main cause of the lack of acknowledgment of the other three realities – *i.e.* that a small number of parents are manifestly unfit to raise a child; no one has automatic rights over others ... except parents; and the pertinence of the PANTHER principles to parents and children – is the denial of prejudice and discrimination against children, the Juvism Onion Five of section 4.1, and the resulting ten child abuse denialisms outlined in section 4.2. However, for most of us the problem of Adverse Childhood Experiences, or childhood trauma, is probably still ‘too close to home’ – too close to what happened in our own homes – to allow us to look it in the face.

In relation to SMECC’s big five in section 5.1, we see little or no ‘S’ (the three P’s in Schools: Participation, Personality development, and Preparation for responsible parenthood); no ‘M’ (a Minimum norm of Prepared Parenthood); ‘E’ (Education on positive parenting) being only a promise by the Council of Europe and a point of interest for the CRC’s treaty body; and both the first and second ‘C’ (Child-friendly policies and a professional Continuum of care) – although they are certainly not fully absent, especially in the Nordic states – still have a long way to go.

Looking at the ten stages of implementation in section 5.2, we are partly in stage 1, moving gradually towards stage 2 – and occasionally, and on a very limited scale, up to stage 8 – for most of TRIO’s subcategories, and partly already in stages 8 and 9 in relation to, for instance, a hitting ban. However, in the light of the almost complete lack of parenting education which should go with such a ban, there is little real progress within these two stages, let alone

any progress towards stage 10. Too many opportunities for the advancement of children and their rights still remain untapped.

It is hoped that this contribution, which should be seen as a triptych with the two chapters mentioned below (Willems 2012 and 2016), offers the reader some guidance in drawing his or her own conclusions, and maybe also in making up his or her mind on future study and action, whether outside or within academia, governments, inter-governmental or non-governmental – professional, child rights or other – organizations. Let us, therefore, end on a positive note: the past 25 years have seen children's rights getting off the starting blocks, but we should not – and need not – have another 'lost generation,' certainly not in Europe, in terms of meeting the Big Five developmental needs of all children which implies the Big Five of SMECC for governments. After all, all it takes is to face all the five realities ... and to act upon them.

## GLOSSARY OF PREJUDICE CONCEPTS

**Denialism** = individual (personal), cultural (social), institutional (systemic) and academic (researchers') denial of reality as a way of avoiding uncomfortable truths (*not wanting to know what we need to acknowledge*), in this case the reality of Juivism.

**Juivism** (juvenile ageism) = prejudice and discrimination against children; that is:

*Individual: Childism* = parents see and treat child as personal property.

*Cultural: Parentiarchy* = society sees child as the property of his/her parents.

- The harmful tradition of Automatic Parental Rights when a child is born.
- Perpetuates a culture of Unprepared Parenthood.

*Institutional: Transism* (transgenerational discrimination) = family law and child protection system see and/or treat the child as parental property.

- The legal and child protection systems (thus) perpetuate transgenerational transmission of childhood trauma (from one generation to the next).
- These systems (institutions) thus perpetuate transgenerational social and emotional (and related economic) deprivation and exclusion.

*Academic: Adultism* = researchers overlook children, especially newborns, underestimate (early) childhood trauma, and overestimate or misunderstand childhood resilience.

## FURTHER READING AND REFERENCES

Willems 2012: Willems, Jan CM, 'Principles and promises in the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities,' in: Lisa Waddington, Gerard Quinn, Eilíonóir Flynn (eds.), *European Yearbook of Disability Law – Volume 3*, Intersentia, Cambridge–Antwerp–Portland, 2012, pp. 59-100; updated online version: Willems, Jan CM, 'It takes a SMECC to raise a child; Meeting Basic Developmental Needs of Newborn Persons: Principles and Promises in CRC and CRPD,' available at: <pub.maastrichtuniversity.nl/2bde406f-987e-456e-9463-94453a464143>.

Willems 2016: Willems, Jan CM, 'Too close to home: The Denial of Prejudice and Discrimination against Children,' in: Roland Moerland, Hans Nelen, Jan CM Willems (eds.), *Denialism and Human Rights*, Intersentia (in press, 2016; online 2016/2017).



## BIOGRAPHY

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## ENDNOTES

- 1 See Office of the High Commissioner for Human Rights, <ohchr.org>, Human rights bodies, Committee on the Rights of the Child, Convention.
- 2 See <schematherapysociety.org>.
- 3 For Key Concepts, videos and documentation, see <developingchild.harvard.edu/science>.
- 4 See <ACEstudy.org> and <acestoohigh.com>.
- 5 For scientific information on emotional intelligence, see <unh.edu/emotional\_intelligence>.
- 6 Such as, for instance, Emotionally Focused Therapy (EFT), see <iceeft.com>.
- 7 See <developingchild.harvard.edu/resources/building-adult-capabilities-to-improve-child-outcomes-a-theory-of-change>.
- 8 See <developingchild.harvard.edu/science/key-concepts/toxic-stress>.
- 9 See <who.int/topics/breastfeeding/en>. Also see the Still Face Experiment (Dr Edward Tronick), <youtube.com/watch?v=apzXGEbZht0>.
- 10 See, for mothers and fathers, respectively, <worldpolicycenter.org/policies/is-paid-leave-available-for-mothers-of-infants>, and <worldpolicycenter.org/policies/is-paid-leave-available-for-fathers-of-infants>.
- 11 See <pshe-association.org.uk>.
- 12 See <coe.int/en/web/edc>.
- 13 See <gov.scot/Topics/Education/Schools/HLivi/sex-education> on Relationships, Sexual Health and Parenthood Education.
- 14 See <fao.org/righttofood/about-right-to-food/human-right-principles-panther/en>.
- 15 See, e.g., <nesri.org/programs/what-are-the-basic-principles-of-the-human-rights-framework>.
- 16 According to article 49.1 CRC, 'The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.'
- 17 According to article 49.2 CRC, 'For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.' This means that the CRC became a binding treaty for Somalia, and thus for all UN member states except the USA, on 31 October 2015.
- 18 For a campaign for US ratification, see <childrightscampaign.org>.
- 19 See <treaties.un.org>, Status of Treaties, Chapter IV (Human Rights), 11.
- 20 Status as at 22 December 2015, see <treaties.un.org>, Status of Treaties, Chapter IV, 11b and 11c.
- 21 See <treaties.un.org>, Status of Treaties, Chapter IV, 11d.

- 22** See <ohchr.org>, Human rights bodies, Committee on the Rights of the Child, OP on a communications procedure.
- 23** See <ohchr.org/EN/HRBodies/CRC/Pages/CRCIntro.aspx>. The Committee on the Rights of the Child also monitors implementation of two Optional Protocols to the Convention (to which the USA is a state party).
- 24** See <ohchr.org>, Human rights bodies, Committee on the Rights of the Child, General Comments.
- 25** See above note 24.
- 26** See <ohchr.org/EN/HRBodies/CRC/Pages/CallRightsofAdolescents.aspx>.
- 27** See above note 24.
- 28** See <unviolencestudy.org>.
- 29** See <un.org/documents/ga/res/48/a48r104.htm>.
- 30** See <srs.g.violenceagainstchildren.org>.
- 31** See <ohchr.org/EN/Issues/Women/SRWomen/Pages/SRWomenIndex.aspx>.
- 32** See <endcorporalpunishment.org/progress/countdown.html>.
- 33** See <wcd.coe.int/ViewDoc.jsp?id=1073507&Site=CM>.
- 34** See above note 33.
- 35** See <conventions.coe.int>.
- 36** See <coe.int/web/children/lanzarote-convention>.
- 37** See <coe.int/en/web/istanbul-convention/home>.
- 38** See <ec.europa.eu/justice/fundamental-rights/charter/index\_en.htm>. Also see <ec.europa.eu/justice/fundamental-rights/rights-child/index\_en.htm>.
- 39** See <eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>.
- 40** For definitions of the term ‘denialism(s)’ and the prejudice concepts in this section, see Willems 2016. Also see section 5.2 below (Stage 1), and the glossary at the end of this chapter.
- 41** See James G. Dwyer, ‘Diagnosing and dispelling denialism regarding children,’ in: Roland Moerland, Hans Nelen, Jan CM Willems (eds.), *Denialism and Human Rights*, Intersentia (in press, 2016; online 2016/17).
- 42** See Jan CM Willems, ‘Too close to home: The denial of prejudice and discrimination against children,’ in: Roland Moerland, Hans Nelen, Jan CM Willems (eds.), *Denialism and Human Rights*, Intersentia (in press, 2016; online 2016/17); hereafter Willems 2016.
- 43** See Elisabeth Young-Bruehl, ‘Childism: The Unacknowledged Prejudice Against Kids’ (*Time*, <time.com>, 26 April 2012), <ideas.time.com/2012/04/26/childism-the-unacknowledged-prejudice-against-kids>.
- 44** See Willems 2016.
- 45** See, e.g., the LONGSCAN classification, <unc.edu/depts/sph/longscan/pages/maltx/index.htm>, Modified Maltreatment Classification System.
- 46** According to the *Lancet*’s studies of 2008, approximately ten percent of children in high-income countries is maltreated, see <thelancet.com/series/child-maltreatment>.
- 47** See <ACEstudy.org>, <cdc.gov/violenceprevention/acestudy>, and <acestoohigh.com>.
- 48** See James Kenny and Daniel Pollack, ‘“Bonding” in the child placement process: A psychological and legal perspective,’ *Policy & Practice* (APHSA), December 2015, pp. 5 and 30-31 (<www.aphsa.org>). Also see Tonny Weterings, ‘Denial of developmental needs of foster children by Dutch

- youth care services,' in: Roland Moerland, Hans Nelen, Jan CM Willems (eds.), *Denialism and Human Rights*, Intersentia (in press, 2016; online 2016/17).
- 49** Bruce D. Perry and Maia Szalavitz, *The boy who was raised as a dog, and other stories from a child psychiatrist's notebook; What traumatized children can teach us about loss, love and healing*, Basic Books, New York, 2006, pp. 38-39.
- 50** For references, see Willems 2016.
- 51** Belgium, Czech Republic, France, Italy (Supreme Court ruling only), and the UK; a legal ban is under discussion in Lithuania, Slovakia and Slovenia. See <endcorporalpunishment.org/progress/legality-tables>, European Union (25 December 2015).
- 52** See <educationupdate.com/archives/2014/MAR/HTML/cov-Gertrud\_Lenzer.html#.VGde90Z0xjo>.
- 53** See <thelancet.com/series/child-maltreatment>.
- 54** See Willems 2012, 'It takes a SMECC to raise a child' (online), for more information and references.
- 55** For full references of the authors and other sources in this list, see Willems 2012 and 2016.
- 56** See Stanley Cohen, *States of Denial; Knowing about Atrocities and Suffering*, Polity Press, Cambridge, 2001, Chapter 1 ('The Elementary Forms of Denial') and Chapter 2 ('Knowing and Not-Knowing; The Psychology of Denial').
- 57** See <bigthink.com/videos/vincent-felitti-on-childhood-trauma>.
- 58** See <acestoohigh.com/2012/10/03/the-adverse-childhood-experiences-study-the-largest-most-important-public-health-study-you-never-heard-of-began-in-an-obesity-clinic>.
- 59** See <acestoohigh.com>, ACEs 101 (<acestoohigh.com/aces-101>).
- 60** See <acesconnection.com>.
- 61** See <ted.com/talks/nadine\_burke\_harris\_how\_childhood\_trauma\_affects\_health\_across\_a\_lifetime>.
- 62** See <centerforyouthwellness.org>.
- 63** See <developingchild.harvard.edu>, Innovation & Application (<developingchild.harvard.edu/innovation-application>) and Collective Change (<developingchild.harvard.edu/collective-change>).
- 64** See <attachmentparenting.org>.
- 65** See <effectiveparentingusa.org> and <effectiveparentingusa.org/Positive\_Parent.html>.
- 66** See <allianceforchildhood.eu>.
- 67** See <wavetrust.org/our-work/campaigns/7030-campaign>.
- 68** See <kinderrechtenu.nl/checklist> and <kinderrechtenu.nl/producten/instrumenten-krnus>; for downloads in Dutch: <kinderrechtenu.nl/downloads>; for English downloads: <kinderrechtenu.nl/downloads/english-downloads>.
- 69** 'The upbringing [or parenting] pledge contains not only a statement [by new parents] of lasting commitment towards the child, but also an explicit declaration of commitment to respect and promote the rights of the child both as a person and as a human being who is utterly dependent upon his or her parents for his or her wellbeing and the development of his or her personality. By means of the upbringing pledge as a child rights based social institution, the responsibilities of society and the state towards both

parents and children are re-affirmed as well.' See <boek.be/boek/shared-pedagogical-responsibility>.

- 70** See <academia.edu/3199700/Parent\_Licensing\_and\_the\_Protection\_of\_Children>.
- 71** See <academia.edu/4016847/A\_Parenthood\_Pledge>.
- 72** See <wisconsincares.net>, Info.
- 73** See <onlinelibrary.wiley.com/enhanced/doi/10.1111/j.1468-5930.2010.00497.x>.
- 74** See <thelancet.com/journals/lancet/article/PIIS0140-6736(04)17191-2/abstract>: 'We assessed potentially detrimental parental actions induced by infant crying in 3,259 infants aged 1-6 months, in the Netherlands. In infants aged 6 months, 5.6% (...) of parents reported having smothered, slapped, or shaken their baby at least once because of its crying.' (S.A. Reijneveld *et al.*, Infant crying and abuse, *The Lancet* 2004.)