Chapter 17

Article 18: Rights Concerning Parental Responsibility

Roberta Ruggiero

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

What Did Children Say?

‘Governments should help them to do so. For me, States should put in place means to help parents and their children. For example, suppose there are six children in a house with two bedrooms, we should help them move to a social

(continued)

R. Ruggiero (✉)

Centre for Children’s Rights Studies, University of Geneva, Geneva, Switzerland

e-mail: roberta.ruggiero@unige.ch

© The Author(s) 2022

Z. Vaghri et al. (eds.), *Monitoring State Compliance with the UN Convention on the Rights of the Child*, Children’s Well-Being: Indicators and Research 25, https://doi.org/10.1007/978-3-030-84647-3_17

153

house with six bedrooms. We have to look at all this in relation to the situation of children.’ (*Western Europe/Other*)

‘The opportunity to have parental care (basic needs such as food, clothing, medicine, safety). In almost all areas children under 18 can only get help with adults.’ (*Eastern Europe*)

‘If this one is respected, we don’t need the others anymore! Article 18 is the cornerstone.’ (*Western Europe/Other*)

Overview

Article 18 concerns parents and other primary caregivers’ equal responsibilities for the upbringing and the development of their children and the States Parties role in assisting them in the performing of their primary responsibility. The article strives to achieve a balance of responsibility between the child’s parents, including other primary caregivers, and the States Parties (UNICEF, 2007, p. 231).

Article 18 supplements Article 3(2) and 5, directly bestowing on parents and other primary caregivers the primary responsibility for the rearing and development of the child, further underlining that parental decisions should always be taken with due consideration for the best interests of the child (Article 18(1)). Furthermore, it is complementary to Article 27(2), which charges parents with the responsibility to secure ‘the conditions of living necessary for the child’s development.’

It also reiterates States Parties’ obligations to provide appropriate assistance to parents in the performance of their child-rearing responsibility (Article 18(2)). The combined reading of Articles 18(2) and 3(2) and (3) bestow on States Parties the responsibility to render appropriate assistance to parents in the performance of their child-rearing responsibility, namely through the creation of institutions, facilities, and services for the care of children and monitoring of the latter’s compliance with the quality standards. Both provisions are therefore closely intertwined, even though Article 3(3) does not exclusively refer to institutions dedicated to child-rearing, but to those dedicated to child protection generally (de Detrick, 1999, p. 29; Freeman, 2007, pp. 71–72; Ruggiero et al., 2017).

In addition, Article 18 combined with ‘Article 5 (parental and family duties and rights, the child’s evolving capacities) and Articles 3(2) and 27 (the States Parties’ responsibility to assist parents in securing that children have adequate protection and care and an adequate standard of living) affirms that (UNICEF, 2007, p. 231):

- both parents and other primary caregivers have common and equal responsibility for the upbringing and development of the child
- parents and other primary caregivers hold the primary responsibility for securing the child’s best interest, but at the same time this responsibility on the basis of the circumstances of the child and in the respect of his/her rights may be shared with others such as members of the wider family

- the best interest of the child will be parents' basic concern in the fulfillment of their responsibility.

During the drafting of Article 18, the American delegate remarked that the wording of paragraph 1 was rather strange because an international treaty cannot create a responsibility on individuals but can only set binding obligations for ratifying governments (de Detrick, 1999, pp. 302–303; Detrick et al., 1992, p. 270; UN Commission on Human Rights, 1989, pp. 50–52; UNICEF, 2007, pp. 232–233). However, the imperative tense used remained in the final version of Article 18(1) because the principle implies a direct bearing on the actions of States Parties, which are obliged to translate all legislation on parents' rights into principles of 'parental responsibilities'—the legal responsibility of parents to act in the best interests of their children—as required by the Convention.

Following the wording of Article 18(2), States Parties have the obligation to support parents and other primary caregivers in the fulfillment of their responsibility and undertake all the appropriate measures to assist them in the accomplishment of their child-rearing responsibility.

With reference to Article 18 (3), States Parties must step in to secure the child's rights and needs, in all those cases where parents are not able to fulfil their responsibility,

The content of these two last paragraphs is in line with Article 10 of the International Covenant on Economic, Social and Cultural Rights, which accords to the family the 'widest possible protection and assistance' of States Parties in particular, while the family 'is responsible for the care and education of dependent children.' Articles 23 and 24 of the International Covenant on Civil and Political Rights reiterate these principles (UNICEF, 2007, p. 232).¹

Article 18 does not juxtapose parents' rights to children's rights, but it rather asserts 'parents and other primary caregivers' primacy in relation to the state, not the child, and the article is about parental responsibilities rather than rights. In doing so, the Convention 'imposes on States parties the' *obligation to respect* the parent's role, by refraining from arbitrary interferences in the exercise of the parental responsibility and the *obligation to fulfil*, by taking all appropriate legislative and administrative measures to nurture parental resources—both in terms of personal skills and availability of support facilities (UN Committee on the Rights of the Child, 2006, para. 15, 2013a, para. 56). In this framework, parents enjoy a degree of discretion as holders of what have been defined as *limited* (Archard, 2014, pp. 149–152) and *functional* (Reynaert et al., 2009, p. 518) rights (Ruggiero et al., 2017, p. 75). The limitations of these rights are of a twofold nature. First, they are limited by the evolving capacity of the child. As the child matures, the rights will be automatically

¹Here we do not unpack the definitions of 'family' and 'caregivers'. However, for information about these aspects see: General Comment no. 5, 1994, of the Committee on Economic, Social and Cultural Rights (United Nations, 2006, p. 31), Human Rights Committee, General Comment No. 17, 1989 (United Nations, 2006, p. 184), and Committee on the Rights of the Child General Comment no. 7 (2006, para. 15).

restricted or reshaped in their content and scope (Article 5). Secondly, the parents' right, including the rights of other primary caregivers, should be exercised in the full respect of the best interest of the child and their enjoyment of the full range of rights included in the Convention (Ruggiero et al., 2017, pp. 71–75).

General Principles

Article 2 Article 18 reaffirms that parents have the primary responsibility for promoting children's development and well-being, with the child's best interests as their basic concern (UN Committee on the Rights of the Child, 2006, para. 18). This applies equally to younger and older children, and to children belonging to all possible kind of families with no discrimination (UN Committee on the Rights of the Child, 2006, paras. 5, 18, 20), including children in the context of migration (UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and UN Committee on the Rights of the Child, 2017, para. 44).

Article 3 The best interests of the child is the parents 'basic concern' in the performing of their responsibilities for the upbringing and development of the child. In particular, General Comment no. 14 provides guidelines on how to determine the child best interests and leads the decisions by all those concerned with children, including parents and caregivers (UN Committee on the Rights of the Child, 2013b, para. 10).

Article 6 Based on Article 18, parents hold the primary responsibility for the child's development. Development is a wide concept that needs to be determined on the basis of Articles 6, 27 and 29. 'If a child's physical, psychological or intellectual development is being impaired by the avoidable actions of the parents, then the parents can be found to be failing in their responsibilities' (UNICEF, 2007, p. 232).

Article 12 Parenting support should be provided with the intention of strengthening parent's ability to enhance children's capacities to exercise their right to participation under Article 12. To express their opinion, children need to be informed about issues concerning them, possible decisions to be taken, and related consequences. Parents as primary caregivers should be able to provide their children with all the needed information (UN Committee on the Rights of the Child, 2009, para. 25).

States Parties need to introduce national legal provisions regulating the balance between parental consent and parental responsibility towards children's rights to express their opinion on matters that affect their lives. The Committee underlies that in all cases in which the child demonstrates sufficient understanding, they should be entitled to give or refuse consent and their voluntary and informed consent should be obtained, 'whether or not the consent of a parent ... is required for any medical treatment or procedure' (2009, para. 101, 2016, para. 39). Moreover, the Committee also suggests the adoption of national legislation with the twofold aim of making a

distinction between the right to give medical consent and to have access to health commodities, and introducing the ‘legal presumption that adolescents are competent to seek and have access to preventive or time-sensitive sexual and reproductive health commodities and services’ without the consent of a parent and irrespective of their age (2009, para. 101, 2016, para. 39).

Articles Related to or Linked to Article 18

Article 5 states that parents’ role is to offer appropriate direction and guidance in the exercise by children of their rights in the respect of the child’s evolving capacities.

Articles 3 imposes, in paragraph 2, the States Parties’ responsibility to assist parents in performing their role. It also requires, in paragraph 3, States Parties to ensure that institutions, services, and facilities responsible for the care or protection of children, shall conform to the standards established by competent authorities.

Articles 6, 27 and 29: The combined reading of these three articles allow the outlining of the child’s physical, psychological, and/or intellectual development. If the child’s full development is being impaired by parents’ behaviour, ‘then the parents can be found to be failing in their responsibilities’ (UNICEF, 2007, p. 232).

Article 7 is child’s right to know and be cared for by parents.

Article 9 deals with separation from parents, which extends to the State obligation not to separate children from their parents unless it is in the child’s best interests and it is not due to economic issues and poor parenting that could be improved with adequate parenting support by the State.

Article 10 concerns family reunification.

Articles 14 requires that parents should be supported in order to provide rights-based parenting, in a child-centred way, in respect of the child’s right to freedom of religion.

Article 16 concerns protection from arbitrary interference, with family and home.

Article 26 deals with the right of the child to benefit from social security, including social insurance.

Article 27 states that parents or other caregivers have the primary responsibility to secure the conditions of living necessary for the full child’s development and that States Parties have the obligation to assist them in the fulfilment of their role.

Article 31 protects the child’s right to rest, leisure, play, recreational activities, cultural life, and art. States Parties are obliged ‘to adopt specific measures aimed at achieving respect for the right of every child, individually or in association with others’, including guidance and support for caregivers (UN Committee on the Rights of the Child, 2013a, para. 56).

Relevant Instruments

UN Universal Declaration of Human Rights (1948), Article 16

International Covenant on Economic, Social and Cultural Rights (1966), Article 10

International Covenant on Civil and Political Rights (1966), Articles 23 and 24

UN Convention on the Elimination of All Forms of Discrimination against Women (1979), Article 16, 11(2)(c) and Article 5(b)

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), Article 12(4)

UN Convention on the Rights of Persons with Disabilities (2006), Article 23

African Charter on Human and Peoples' Rights (1981), Article 18(3)

American Convention on Human Rights 'Pact of San Jose, Costa Rica' (B-32) (1978), Article 17(4)

Attributes

Attribute One: Common Primary Responsibilities for the Upbringing Under the Primary Consideration of the Child Best Interest

Based on Article 18(1), the parents' responsibility for the upbringing of the child is composed of three provisions. First, it must be common and shared in equal measure between the parents. This reflects the provision of the Articles 5 and 16 of the Convention on the Elimination of All Forms of Discrimination against Women and invites States Parties to include this principle in their legislation, provisions of services and all the education measures dedicated to parents. Furthermore, it completes the provisions of Article 27 with reference to single-parent families, for what measures exist to ensure the recovery of maintenance, which goes beyond the financial responsibility and includes upbringing responsibilities, including those of fathers of children born out of wedlock (UNICEF, 2007, p. 235).

Second, responsibility is primarily attributed to parents or other caregivers. During the drafting of Article 18(1), it was underlined that the second sentence of the first paragraph was meant to balance States Parties and parents' position with the twofold intention to protect parents against excessive intervention by the States Parties, and 'to indicate that parents could not expect the state always to intervene because the upbringing and development of their children was primarily their responsibility' (de Detrick, 1999, pp. 301–303).

Third, it must be provided in a manner consistent with the child's best interests as a basic concern. The perceptions of the child's best interests vary from case to case. However, the requirement to ensure that they are guided by reference to respect for the child's rights under the Convention does serve to provide a framework. As a

consequence, States Parties are required to monitor parents' compliance with the Convention and provide parent education on rights-based parenting (UN Committee on the Rights of the Child, 2003, 2006; UNICEF, 2007, p. 233).

Attribute Two: State's Appropriate Assistance to Parents

Article 18(2) imposes States Parties responsibility to provide appropriate assistance to parents. It reflects the provisions of Article 3(2),² Article 27(3), with reference to the child's right to an adequate standard of living,³ and with Article 26 with reference to the right of the child to benefit from social security, including social insurance.⁴

The States Parties must set up an adequate legislative and policy framework able to secure the providing of a wide range of support, which may include, to name a few, financial assistance, social security benefits, initiatives of advice and education on positive parenting and positive child-parent relationships, adequate training to social workers, housing, day-care, home helps, equipment and so forth, as well as psychological and professional support. States Parties support should create the living conditions necessary to give parents and other primary caregivers the opportunity to fully exercise their primary responsibility (de Detrick, 1999, pp. 307–308). Therefore, this assistance, also defined as a tertiary approach (Cantwell et al., 2012), should be provided when appropriate and in particular when parents for whatever reason, whether or not it is their fault, are unable to carry out their child-rearing responsibility (UN Committee on the Rights of the Child, 2003, 2013a, 2016; UNICEF, 2007, p. 237). However, state support should be provided not exclusively in case of need, but also as a general form of assistance to all parents, as a manifestation of the States Parties' responsibility and interest in children as an investment in social well-being (UNICEF, 2007, pp. 234, 237–238).⁵

²Article 3(2): 'States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures;'

³Article 27(3): 'States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right.'

⁴Article 26: '1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law. 2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.' (de Detrick, 1999, p. 305; UNICEF, 2007, p. 237).

⁵United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) states: 'Measures should be taken and programmes developed to provide families with the

Attribute Three: Development of Institutions, Facilities, and Services for the Care of Children

Article 18(2) refers to a specific category of institutions, facilities, and services for the care of children. These could include community-based centres, for example, those dedicated to single parents with young children, play-groups, toys, libraries or youth clubs, and support centres for adolescent parents. These could also provide education to parents, including for those whose traditions and norms may differ from those in the society where they live (de Detrick, 1999, pp. 304–305; UN Committee on the Rights of the Child, 2003, para. 7, 2006, para. 16; UNICEF, 2007, p. 238). Under Article 18(2), States Parties are required to ‘ensure the development’ of all those institutions, facilities and services that are not already identified by:

- Article 20 for what is required to meet the state responsibility to provide for out-of-home-children
- Article 18(3), with reference to States Parties’ obligation to provide services for children of working parents
- Articles 23, 24 and 28, in relation to facilities and services for children with disabilities, health and education (UNICEF, 2007, p. 238).

States Parties are in any case obliged to secure the compliance of these services and facilities with standards established by competent authorities, in terms of health, safety, and quality of their staff, in line with Article 3(3) (de Detrick, 1999, pp. 309–305).

Attribute Four: Appropriate Measures for the Care of Children of Working Parents

Based on several General Comments, the needs of children of working parents must be afforded a high priority. Therefore, as per Article 18(3), States Parties are obliged to secure the availability and accessibility of public and private child-day-care services and facilities. Access to these services is determined on the basis of eligibility criteria set by the States Parties. States Parties are required to set up these services in respect of the wording of the second sentence of Article 4 (‘to the maximum extent of their available resources’) and should ensure that these services and facilities conform with standards established by competent authorities, in terms of health, safety, and quality of their staff, in line with Article 3(3) (de Detrick, 1999, pp. 309–310).

opportunity to learn about parental roles and obligations as regards child development and childcare, promoting positive parent-child relationships, sensitizing parents to the problems of children and young persons and encouraging their involvement in family and community based activities’ (UN General Assembly, 1991, para. 16).

References

- Archard, D. (2014). *Children: Rights and childhood* (3rd ed.). Routledge.
- Cantwell, N., Davidson, J., Elsley, S., Milligan, I., & Quinn, N. (2012). *Moving forward: Implementing the 'guidelines for the alternative care of children'*. The Centre for Excellence for Looked After Children in Scotland. <https://www.alternativecareguidelines.org/MovingForward/tabid/2798/language/en-GB/Default.aspx>
- de Detrick, S. L. (1999). *A commentary on the United Nations Convention on the Rights of the Child*. Brill Nijhoff. Retrieved November 6, 2020, from <https://brill.com/view/title/10630>
- Detrick, S., Doek, J. E., & Cantwell, N. (1992). *The United Nations Convention on the Rights of the Child: A guide to the "Travaux Préparatoires"*. Martinus Nijhoff Publishers.
- Freeman, M. (2007). *A commentary on the United Nations Convention on the Rights of the Child, Article 3: The best interests of the child*. Brill Nijhoff.
- Reynaert, D., Bouverne-de-Bie, M., & Vandevelde, S. (2009). A review of children's rights literature since the adoption of the United Nations Convention on the Rights of the Child. *Childhood*, 16(4), 518–534. <https://doi.org/10.1177/0907568209344270>
- Ruggiero, R., Volonakis, D., & Hanson, K. (2017). The inclusion of "third parties": The status of parenthood in the Convention on the Rights of the Child. In E. Brems, E. Desmet, & W. Vandenhoele (Eds.), *Children's rights law in the global human rights landscape: Isolation, inspiration, integration?* (1st ed., pp. 71–75). Routledge.
- UN Commission on Human Rights. (1989). *Report of the working group on a Draft Convention on the Rights of the Child, 1989, E/CN.4/1989/48*. Retrieved October 12, 2020, from <https://digitallibrary.un.org/record/57437?ln=en>
- UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, & UN Committee on the Rights of the Child. (2017). *Joint General Comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration, CMW/C/GC/3, CRC/C/GC/22*. UN. Retrieved November 6, 2020, from <http://digitallibrary.un.org/record/1323014>
- UN Committee on the Rights of the Child. (2003). *General Comment No. 4 (2003) Adolescent health and development in the context of the Convention on the Rights of the Child, July 1, 2003, CRC/GC/2003/4*. Retrieved October 12, 2020, from <https://digitallibrary.un.org/record/503074?ln=en>
- UN Committee on the Rights of the Child. (2006). *General Comment No. 7 (2005) Implementing child rights in early childhood, September 20, 2006, CRC/C/GC/7/Rev.1*. Retrieved October 12, 2020, from <https://digitallibrary.un.org/record/584854?ln=en>
- UN Committee on the Rights of the Child. (2009). *General Comment No. 12 (2009) The right of the child to be heard, July 20, 2009, CRC/C/GC/12*. Retrieved October 12, 2020, from <https://digitallibrary.un.org/record/671444?ln=en>
- UN Committee on the Rights of the Child. (2013a). *General Comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31), April 17, 2013, CRC/C/GC/17*. Retrieved October 12, 2020, from <https://digitallibrary.un.org/record/778539?ln=en>
- UN Committee on the Rights of the Child. (2013b). *General Comment No. 14 (2013) On the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), May 29, 2013, CRC/C/GC/14*. Retrieved October 12, 2020, from <https://digitallibrary.un.org/record/778523?ln=en>

- UN Committee on the Rights of the Child. (2016). *General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence*, December 6, 2016, CRC/C/GC/20. Retrieved October 12, 2020, from <https://digitallibrary.un.org/record/855544?ln=en>
- UN General Assembly. (1991). *United Nations guidelines for the prevention of juvenile delinquency (The Riyadh Guidelines)*, 1990, A/RES/45/112. UN. Retrieved November 6, 2020, from <http://digitallibrary.un.org/record/105349>
- UNICEF. (2007). *Implementation handbook for the Convention on the Rights of the Child* (3rd ed.) UNICEF. Retrieved April 19, 2020, from https://www.unicef.org/publications/index_43110.html
- United Nations. (2006). *Compilation of General Comments and General Recommendations adopted by human rights treaty bodies*, HRI/GEN/1/Rev. 8. UN. Retrieved April 19, 2020, from <http://digitallibrary.un.org/record/576098>

Open Access This chapter is licensed under the terms of the Creative Commons Attribution 4.0 International License (<http://creativecommons.org/licenses/by/4.0/>), which permits use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.