Chapter 29

Article 31: The Rights to Rest, Play, Recreation, and Cultural and Artistic Activities

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1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

What Did Children Say?

‘We have to make sure that school establishment organise artistic and cultural competition.’ (*Africa*)

‘Inclusion of traditions in school subjects and student clubs (Glee club, different native instruments, arts club, Flores de Mayo/Santacruzán, Language Month).’ (*Asia-Pacific*)

The playing areas outside the camp are very far where parents should accompany their children so at the end the parents will stop doing that because of having more priority duties for living. (*Asia-Pacific*)

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Overview

The initial proposal for recognition of the right to play, during the Convention drafting process, was based on an earlier principle in the Declaration of the Rights of the Child. Both were included as a provision within education and described as having common purposes: to develop abilities, individual judgement, a sense of moral and social responsibility, and to become a useful member of society (Office of the United Nations High Commissioner for Human Rights and Rättsbarnen (Society: Sweden), 2007, p. 683). Subsequent debate highlighted the need to understand play as having a different and broader meaning for children that could not be limited to educational pursuits. Concern was also raised that the initial draft contained no recognition of the role of cultural life and the arts in the lives of children. Accordingly, the drafters moved towards the development of a discrete article encompassing rest, leisure, play, recreation, cultural life, and the arts. In its reporting guidelines, the Committee includes Article 31 within the cluster containing education, not with the intention of limiting its scope, but to indicate the strong links to this area (David, 2006, p. 15).

Initially, the Committee paid scant attention to Article 31. Analysis of 98 concluding observations from 2000 to 2004 revealed that the Committee only addressed its provisions in 15 cases (David, 2006, p. 17). It has been described as the forgotten right and for many years there was limited jurisprudence in respect of its implementation (Hodgkin et al., 2007). The Committee now recognises that it has been one of the most neglected rights in the reporting process, with States Parties rarely seeking to reference measures undertaken to ensure its realisation (2006, para. 34, 2013, para. 2).

The Committee notes that failure to prioritise Article 31 has led to lack of investment and weak or non-existent protective legislation, and that when investment is made it tends to be orientated towards structured and organised activities rather than ensuring the time and space for children to engage in spontaneous play, recreation, and creativity. Multiple barriers have been identified as impeding the implementation of Article 31, many of which are attitudinal rather than resource based and indicate the need for a commitment to building social norms that value Article 31 rights. They highlight that challenges exist in countries at all income levels and include lack of recognition of play's importance, unsafe and hazardous environments, resistance to children's use of public spaces, pressure for educational achievement, overly structured and programmed schedules, neglect of Article 31 in development programmes, lack of investment in cultural and artistic opportunities, growing role of digital media, and commercialisation of children's play (UN Committee on the Rights of the Child, 2006, para. 34, 2013, paras. 33–47, 2016, para. 75).

In response to earlier neglect, and in recognition of the significance it now attaches to Article 31, the Committee prepared General Comment no. 17, which details the obligations to respect, protect, and fulfil the rights Article 31 embodies. The Committee emphasises that the constituent parts of Article 31 must be

understood holistically and that they have implications for the Convention in its entirety. Play, recreation, rest, leisure, and cultural life are not optional extras. They serve ‘to enrich the lives of children, ... (and) describe conditions necessary to protect the unique and evolving nature of childhood’ and ‘their realisation is fundamental to ... children’s entitlement to optimum development ... (and) the promotion of resilience and to the realisation of other rights’ (UN Committee on the Rights of the Child, 2013, para. 8).

General Principles

Article 2 Some groups of children are disproportionately excluded from exercising their Article 31 rights (UN Committee on the Rights of the Child, 2013, paras. 48–53). The Committee emphasises the imperative for attention to be paid to all children, regardless of gender, including children from the most marginalised communities, as well as those in more affluent environments where, for example, academic pressures or over-protection can serve to exclude children from realising these rights. It also welcomes the explicit obligation in the United Nations Convention on the Rights of Persons with Disabilities, Article 30 (d), to ensure that children with disabilities have equal access with other children to participation in play, recreation, leisure, and sporting activities, including those activities within school.

Article 3 Article 31 requires that States Parties take into consideration children’s best interests in respect of resource allocation, planning, environmental policies, residential and transport policies, provision of parks and leisure facilities, labour and education legislation, and protections in the digital environment.

Article 6 Realisation of all the Article 31 rights is necessary for children’s optimum development. Any measures provided must take into account children’s evolving capacities and developmental needs (UN Committee on the Rights of the Child, 2006, para. 17). To achieve this goal, efforts need to be made to raise awareness and understanding of the centrality and importance of Article 31 rights in the lives of children.

Article 12 Children must be enabled to exercise choice and autonomy in their play as well as in participation in cultural and artistic activities, consistent with their evolving capacities. They must have opportunities to contribute to legislation, policies, and design of services affecting their Article 31 rights, as well as contributing feedback on their experiences of how their Article 31 rights are respected in schools and the wider community.

Articles Related or Linked to Article 31

Article 5: All Article 31 rights must be implemented with regard to children's evolving capacities

Article 13: Freedom of expression is necessary for children to realise their rights to artistic and cultural life as well as play and recreation

Article 15: Play and recreation require opportunities for freedom of assembly and association

Article 17: Access to mass media is integral to cultural and artistic life

Article 19: Children are entitled to protection in the exercise of their Article 31 rights

Article 23: Appropriate measures must be implemented to ensure that children with disabilities are able to exercise their Article 31 rights on an equal basis with other children

Article 24: The realisation of Article 31 rights promotes health and development of children

Article 27: Poverty and poor housing serve to limit the opportunity to participate fully in Article 31 rights

Articles 28 and 29: Rest, play, and leisure need to be built into the school structures, and the curriculum must reflect the right of children to participation in the arts and cultural life. Play is an important means through which children learn

Article 30: Children from minority communities must be enabled to enjoy and participate in their own cultures

Article 32: Children must be protected from work that denies them adequate rest and leisure

Articles 37 and 40: Provision must be made to ensure that children who are detained in the juvenile justice system are equally able to exercise their Article 31 rights

Article 39: Children who have experienced violence, abuse, or exploitation can be supported to make sense of their past and cope with the future through opportunities for play or artistic expression

Relevant Instruments

UN Universal Declaration of Human Rights (1948), Article 24

UN Declaration of the Rights of the Child (1959), Article 7

International Covenant on Economic, Social and Cultural Rights (1966), Article 15

UN Convention on the Elimination of All Forms of Discrimination against Women (1979), Article 13

UNESCO Mexico City Declaration on Cultural Policies (1982)

ILO Convention 79, Night Work of Young Persons (Non-Industrial Occupations) (1946), Article 2, prohibiting children under 14 from working at night.

ILO Convention 90, Night Work of Young Persons (Industry) (Revised) (1948), Article 2, mandating a rest period of at least seven hours for workers between 16 and 18 years of age.

ILO Convention 138, Minimum Age (1973), Article 2, requiring states to regulate the minimum age for work.

ILO Convention 182, Worst Forms of Child Labour (1999), Article 3, prohibiting children from carrying out work which is likely to harm their health.

Attributes

Attribute One: Rest and Leisure

Rest and leisure are closely linked and affirm the importance of space in children's lives when there is no expectation of activity or responsibility. Leisure is free or unobligated time that does not involve formal education, work, home responsibilities, performing other life-sustaining functions, or engaging in activity directed from outside the individual (UN Committee on the Rights of the Child, 2013, para. 14). It can be defined as the time in which play or recreation can take place. The Committee argues that children are entitled to, and need opportunity for leisure, which they can choose to fill as actively or inactively as they wish.

The right to rest originated in the Universal Declaration on Human Rights and focused on the need for employees regain their strength *and* to enjoy leisure activities (Melander, 1993, pp. 379, 380). This meaning also extends to children whose working lives are protected under Article 32, and accordingly the Committee encourages States Parties to ratify and implement ILO Conventions Nos. 79, 90, 138, and 182, and introduce legislation and regulations for child employees to guarantee appropriate limits on the nature, hours and days of work, rest periods and recreational facilities, in accordance with their evolving capacities (2013, para. 56 (b)).

The text of Article 31 does not restrict the concept of rest to time apart from work. Indeed, proposals to define it in those terms were rejected in the drafting stages of the CRC (Office of the United Nations High Commissioner for Human Rights and Rädga barnen (Society: Sweden), 2007, p. 689). The Committee has argued that the right to rest requires that children are afforded sufficient respite from work, education or exertion of any kind, to ensure their optimum health and well-being. It also requires that they are provided with the opportunity for adequate sleep. In fulfilling the right to both respite from activity and adequate sleep, regard must be afforded to children's evolving capacities and their developmental needs (UN Committee on the Rights of the Child, 2013, para. 14 (a)). The Committee has expressed concern, for example, that in many states, children are subjected to pressures for educational achievement that lack recognition of the necessity of

appropriate rest (2013, para. 41). It has pointed out ‘that children are exposed to developmental disorders due to the stress of a highly competitive educational system and the consequent lack of time for leisure’ (1998, para. 22, 2012, paras. 62–63). It has also emphasised that States Parties must ensure that school days guarantee sufficient opportunities for rest, in accordance with children’s age and developmental needs (2013, para. 58 (g)). However, it does not seek to prescribe the appropriate levels of either rest or leisure for children.

Attribute Two: Play and Recreation

The Committee takes the view that play and recreation are fundamental and vital dimensions of childhood. Both can take place when children are on their own but also together with peers and supportive adults. Play and recreation have an instrumental role in promoting and advancing children’s development and agency, as well as an intrinsic value in terms of the pleasure and enjoyment they afford. However, the Committee does point to a difference between the two.

There is a surprising lack of consensus regarding the definition of play.¹ The Committee has defined play as ‘any behaviour, activity, or processes initiated, controlled and structured by children themselves; it takes place whenever and wherever opportunities arise’ (2013, para. 14 (c)). It is characterised by being self-directed and undertaken for its own sake rather than as a means to an end. It has the potential to take infinite forms and is characterised by being fun, uncertain, challenging, flexible and non-productive. Although it is often dismissed as non-essential or unproductive time, the Committee argues that play contributes to children’s health and well-being as well as ‘the development of creativity, imagination, self-confidence, self-efficacy, as well as physical, social, cognitive and emotional strength and skills’ (2013, para. 9). In many cases, children’s right to play requires no specific resources but rather recognition of the need for time and space to pursue their imaginations and interests (Lansdown and Tobin, 2019, p. 1216).

On the other hand, recreation is an umbrella term used to describe a broad range of activities, including participation in music, arts, clubs, sports, games, online gaming, hobbies, and community engagement. It applies to online and offline activities freely chosen by children because they perceive value in pursuing them. The Committee makes clear that compulsory or enforced games, sports or other activities do not constitute recreation.

¹For discussions on the definitions of play, see, Doris Bergen, ‘Play as the Learning Medium for Future Scientists, Mathematicians, and Engineers’ (2009, n. 55, p. 416); Stuart Lester and Wendy Russell, Children’s Right to Play (2010, n. 5, pp. 7–14); Albert Solnit, ‘A Psychoanalytic view of play’ (1987, p. 205); Jerry Lewis, ‘Childhood Play in Normality, Pathology and Therapy’ (1993, pp. 6–7); Peter Neubauer, ‘The Many Meanings of Play’ (1987, p. 3); Anthea Holme and Peter Massie, *Children’s Play: A Study of Needs and Opportunities* (1970, p. 39); and James Johnson, James Christie, and Thomas Yawkey, *Play and Early Childhood Development* (1987, pp. 10–11).

In order to create environments where children are able to exercise their rights to play and recreation, States Parties need to invest in measures to raise awareness of their importance in the lives of children and introduce support for parents in the creation of environments that facilitate children's play in accordance with their evolving capacities. Investment is also required in the provision of sports and games facilities, including in schools and school playgrounds, access to parks and green spaces, safe and affordable transport, safe living environments for free play, and traffic safety measures, as well as safe access to the digital environment (UN Committee on the Rights of the Child, 2013, para. 58).

Attribute Three: Cultural Life and the Arts

Article 31, paragraph 1, requires that children are able to participate freely in cultural life. The Committee on Economic, Social and Cultural Rights has argued that it is through the expression of these rights that children and their communities express their identity and the meaning they give to their existence, a view endorsed by the Committee on the Rights of the Child (UN Committee on Economic, Social and Cultural Rights, 2009, para. 13). In its General Comment on Article 31, the Committee clarifies that it focuses on the creative or artistic aspects of cultural life, rather than the broader definition embraced in Article 30 on the right of the child to enjoy their own culture (UN Committee on Economic, Social and Cultural Rights, 2009, para. 6).

Recognition must be afforded to the extent to which children are not merely passive recipients of an inherited culture, but play a significant role in maintaining and transforming cultural life through imaginative play, songs, and stories, and increasingly in the online environment. They contribute to a culture of childhood (Lansdown and Tobin, 2019). Cultural and artistic expression take place in the home, school, streets, and public spaces and through many media, including dance, festivals, theatre, music, cinema, and digital platforms. The role of States Parties is to facilitate this expression, not supply or provide it (World Conference on Cultural Policies, 1982). Accordingly, its implementation for all children necessitates measures to ensure the availability of dedicated and affordable cultural activities for children, which also allow children to produce and create their own cultural forms, and a review of cultural policies, programmes, and institutions, to ensure their accessibility and relevance for all children. The school curriculum needs to allow time for children to learn about and participate in cultural activities including music, drama, literature, poetry, and art (UN Committee on the Rights of the Child, 2013, para. 58 (f), (g)).

Attribute Four: Creating Appropriate and Equal Opportunities for Enjoyment of Article 31 Rights

Article 31, paragraph 2, imposes an obligation to respect and promote the right to participate fully in cultural and artistic life as well as encouraging provision of appropriate and equal opportunities for cultural, artistic, recreational, and leisure activity. Interestingly, play is excluded from this explicit obligation. However, the Committee has interpreted paragraph 2 as extending also to play (2013, para. 15 (b)). In order to strengthen commitment to the realisation of Article 31 rights, the Committee has argued for the introduction of a broad range of strategic measures including legislation and cross-departmental planning, data collection, allocation of budgets, training, and capacity building (2013, para. 58).

With specific reference to the need for ‘appropriate’ opportunities for enjoying Article 31 rights, provision is needed that is age-appropriate, taking into account changing needs of children as they grow older, including amounts of time afforded, nature of spaces and environments, forms of stimulation, and degrees of adult oversight (UN Committee on the Rights of the Child, 2013, para. 14 (e)). In addition, the Committee has recognised the need to balance Article 31 rights with the right to protection from injury and harm. In this respect, it has called for regulations to ensure the safety of toys and games, limit advertising, and establish child protection policies and codes of practice for all professionals working with children in the fields of play, sports, culture, and the arts (UN Committee on the Rights of the Child, 2013, para. 57 (b), (c)). While acknowledging the positive role of the digital environment, the Committee emphasises the need for action to empower children to act safely online, as well as measures to reduce impunity of abusive adults, limit access to harmful material, and improve information for parents, professionals, and adults (2013, para. 57 (d), 2014).

The obligation to ensure equal opportunities for all children requires the introduction of universal design, legislation to ensure non-discrimination to guarantee access for every child, and reviews of cultural policies, programmes, and institutions to ensure they reflect the differing needs and aspirations of all children (UN Committee on the Rights of the Child, 2013, para. 57 (a), 58 (f)). It also requires ending the imposition of curfews and other restrictions on children’s access to public spaces, and the erosion of traditional play spaces.

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