CHAPTER 16
CHILDREN’S RIGHTS TO FREEDOM OF ASSOCIATION, ASSEMBLY, AND PRIVACY

Rebekah Tosado

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (order public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

A. THE RIGHTS OF CHILDREN AND PARENTS UNDER ARTICLES 15 AND 16

Article 15 of the Convention on the Rights of the Child (CRC or Convention) addresses the right of the child to freedom of association and to freedom of peaceful assembly.1 Section 2 of Article 15 contains a limitations clause, which states the conditions under which the exercise of the child’s right to freedom of expression may be restricted; restrictions are permitted when “imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.”

Article 16 addresses the right of the child to be free from “arbitrary or unlawful interference” with respect to privacy, family, home or correspondence, and unlawful attacks on their honor and reputation. Unlike Article 15, Article 16 contains no limitations clause. The provision concerns interference with an individual’s personal sphere and is commonly referred to as the “right to privacy.”

1. Rights of Parents and Children under Articles 15 and 16 of the CRC

Opponents of the CRC in the United States have argued that Articles 15 and 16, as well as other related articles that emphasize individual rights, significantly interfere with the role of the parent. Others have argued that the Convention balances the protection of these rights and the need to protect and preserve the family and the home. This chapter discusses the relationship between parental rights and the rights of children enshrined in Articles 15 and 16 of the Convention.

Article 5, the primary provision in the Convention for recognition of the parental role in child rearing, states:

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

In addition, Article 18 recognizes that parents “have the primary responsibility for the upbringing and development of the child” and two paragraphs in the Preamble to the Convention emphasize the importance of the role of the family.

---

2 Id. at 269–70.
3 Id.
6 See, e.g., John E.B. Myers, The Child, Parents and the State, in ABA CHILDREN’S RIGHTS IN AMERICA, supra note 4, at 88; Shepherd, supra note 4, at 146.