The Role of the Professions in Effective Implementation of the CRC

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Abstract

The CRC can only be fully effective if integrated in domestic legal systems and if operative at all levels of governance. Effective implementation also requires that the CRC is accepted in practice as a code governing interactions between state and private institutions, children and their families. This means, amongst other things, that the CRC should be internalised in professional culture so that professionals absorb the values and requirements of the Convention. This chapter explores how professional ethics, policies and practices need to adapt to accommodate children's rights. Integration of children's rights with professional practice poses challenges to traditional approaches and value systems. It is argued that while legal redress and professional training are essential, children's rights also need to be reflected in regulatory systems, practice guidance, protocols and processes that surround the exercise of professional practice. It is suggested that a legislative device such as the ‘due regard’ duty in the Rights of Children and Young Persons (Wales) Measure 2011, establishing the CRC as a pervasive reference in administrative and operational decision-making, is a potentially effective way of creating an imperative to address these challenges. However, solutions and adaptations also need to come from within the professions themselves.

1 Introduction

Professionals hold a crucial key to the effective implementation of the UN Convention on the Rights of the Child (CRC). In practice children need specialist professional advice and support to assert their rights. Professionals are centrally involved in the delivery of services and resources to protect and provide for children as required by the Convention. Professional knowledge and judgment informs many of the policy decisions which create or impede the conditions in which rights are realised, and, as members of civil society, professionals are often engaged in local governance, for example, as trustees or on governing bodies of schools, health and social welfare bodies and charities. When a professional practitioner engages directly with children, the ability of
that practitioner to listen to and respect the child can be critical to realisation of the child’s participative rights.

For all these reasons, it is perhaps surprising that the literature on the CRC does not pay more attention to the nature and scope of professional engagement in implementation or to the conflicts and challenges such engagement can expose. This chapter explores these issues and suggests that they merit further examination at all levels. At the international level, the UN Committee on the Rights of the Child could hold a Day of Discussion and produce a General Comment on State Party obligations regarding the impact of the professions. At the regional and national levels, governments should examine whether their laws are adequate to ensure that professionals are required to adhere to standards conducive to respecting, protecting and fulfilling children’s rights. At local levels, where professional services are delivered, individual practitioners and persons who employ or commission them need to examine their own practices, protocols and behaviour in light of the requirements of the Convention.

2 General Measures of Implementation

The role of the professions is rightly seen in the context of the general measures of implementation as well as sectoral measures. The general measures of implementation are derived from article 4, which states that ‘States Parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights set out in the Convention’. In its General Comment No. 5, the Committee on the Rights of the Child outlined the essential elements of what it described as the complex concept generated by article 4: that of ‘general measures of implementation’.1 The Committee had started to explore this notion in its earlier General Comment No. 2 on the role of national independent human rights institutions on the promotion and protection of the rights of the child.2

General Comment No. 5 states that all the rights in the Convention should be justiciable: that is, it should be possible for a child or children or groups of children, parents or other interested parties, to take an alleged violation to court and get a judicial remedy. Obviously, there is a need for professional legal advice, representation and professional opinion in the context of legal

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1 UN Committee on the Rights of the Child, General Comment No. 5 on general measures of implementation (2003) Geneva CRC/GC/2003/5.