

M for Monitoring and S for State Obligation

Fundamentals and significance of the Convention and what German bilateral government development cooperation can do to support its implementation

The →UN Convention on the Rights of the Child (short: CRC or Convention) guarantees the rights of children, that is of all persons under the age of 18. For the first time, children are recognized as independent legal subjects in an international human rights treaty. Children are the holders of rights which they exercise autonomously.

The UN Convention on the Rights of the Child was adopted by the UN General Assembly in 1989, and came into effect on 2 September 1990. With 193 States parties, the CRC is the human rights treaty with the highest level of endorsement worldwide. Only Somalia, South Sudan and the US have not yet ratified it. Upon ratification, the States parties commit themselves to implementing the UN Convention on the Rights of the Child. One component of this commitment is to monitor the implementation of the Convention. Although the State's monitoring obligation is not explicitly mentioned in the CRC, it is nevertheless derived from the interpretation of articles 4 and 44 of the CRC by the →UN Committee on the Rights of the Child (short: Committee).

In May 2011, the Federal Ministry for Economic Cooperation and Development (BMZ) made the human rights-based approach a binding frame of reference for German bilateral development cooperation and issued its strategy paper →"Human rights in German development policy" (PDF, 574 KB). For children and youth, the BMZ concretises the human rights-based approach in the position paper →"Young people in German development policy – a contribution to the implementation of the rights of children and youth" (PDF, 448 KB).

The present publication by the German Institute for Human Rights is the first of the series "ABC of Children's Rights". It provides information on the State's obligation to monitor the implementation of the CRC and makes recommendations on what German bilateral development cooperation should undertake to fulfil this obligation, and how this should be done.

The UN Committee on the Rights of the Child

The →UN Committee on the Rights of the Child is the expert body of the →UN Convention on the Rights of the Child and its Optional Protocols. The latter govern issues that go beyond the scope of the CRC, namely the →sale of children, child prostitution and child pornography, →involvement of children in armed conflict as well as a →communications procedure (PDF, 10 MB, not barrier-free). The Optional Protocols are ratified separately from the CRC, and are binding for the ratifying States. The UN Committee on the Rights of the Child currently comprises 18 experts from different countries, who are elected by the States parties for a term of four years. In their function as experts they are independent and carry out their work for the Committee free of charge.

The Committee monitors the States parties' progress in implementing the UN Convention on the Rights of the Child through a report mechanism. The first CRC reporting process takes place within two years of the entry into force of the CRC, and every five years after that. At the end of the reporting process, the Committee publishes its →Concluding Observations, in which it gives the State party recommendations on how it can better implement the CRC. In its →General Comments, the UN Committee on the Rights of the Child interprets the articles in the UN Convention on the Rights of the Child – most of which are very short – and gives systematic recommendations on the implementation of the Convention in various policy fields, for example the judiciary or the healthcare system.



Importance of monitoring the UN Convention on the Rights of the Child

The systematic and periodic monitoring of whether and how human rights are enforced is an integral and key component of the implementation of human rights treaties. That also applies to the UN Convention on the Rights of the Child. Monitoring provides important data and information on the basis of which policies and programmes can be geared towards more effectiveness for children. Monitoring also serves to measure changes, that is progress or setbacks, in the realization of children's rights in a State party. In addition, monitoring has a control and warning function which is of particular use to civil society. Independent data collection and information on failed or uneven implementation of children's rights raise awareness of systemic infringements of children's rights and highlight the need for State action.

The State's obligation to monitor the UN Convention on the Rights of the Child

The UN Committee on the Rights of the Child considers the State's monitoring obligations to be anchored in articles 4 and 44 of the CRC, which deal with the implementation of children's rights and the reporting obligations of States parties. This is stressed in its →General Comment No. 2 on "The role of independent national human rights institutions in the promotion and protection of the rights of the child", and in its →General Comment No. 5 on "General measures of implementation of the Convention on the Rights of the Child". General Comments are authoritative interpretations of the articles of the CRC. Although they are not legally binding, the recognised expertise and authority of the UN Committee on the Rights of the Child nevertheless makes them an authoritative guideline for interpreting the UN Convention on the Rights of the Child. In accordance with the view of the Committee, monitoring is thus a State obligation that arises pursuant to articles 4 and 44 of the CRC.

Monitoring and the CRC reporting process

All States parties of the UN Convention on the Rights of the Child are obliged to submit reports to the UN Committee on the Rights of the Child within two years of the CRC's entry into force, and every five years after that. These State reports are to detail the measures

that the respective State party has taken to implement the rights laid out in the CRC, and the progress that has been made. The reports give the Committee an idea of how the UN Convention on the Rights of the Child is being implemented in the country concerned.

For a State party to have access to comprehensive information on the situation of children, and hence on the implementation of the CRC, it must regularly collect and evaluate data – that is it must conduct national monitoring. To this end the UN Committee on the Rights of the Child recommends that State parties develop a data collection system and corresponding indicators. The latter help register changes occurring within a given time frame. The alternative reports submitted by NGOs are also often based on national monitoring. In these reports NGOs and other civil society stakeholders collate information for the Committee concerning a State report that is up for review. In so doing, they critically examine the implementation of children's rights in the respective country. Often they focus on particular groups, for example refugee children or those living with HIV/AIDS, or on issues that relate specifically to children, such as corporal punishment.

Information from the Committee as a resource for development cooperation

The →State and alternative reports can be accessed on the →website of the UN Committee on the Rights of the Child. They provide up-to-date information on the state of implementation of the UN Convention on the Rights of the Child in individual countries. The →Concluding Observations of the Committee give an assessment of the state of implementation of the CRC, as well as concrete recommendations for improvement. For that reason they should be included in political dialogue and consulted when priority area strategies and development measures are being formulated. The →General Comments of the Committee are another important source of information. Many of these describe how policies must be developed in a given sector for them to be conducive to children's rights. Hence they are useful for working out sector strategies in the context of development cooperation.

Obligation of all States parties to monitor

All States parties are subject to the same monitoring obligations. In its Concluding Observations on the reports of many middle or low income countries, the UN Committee on the Rights of the Child calls on these States to use the available resources as effectively as they can to implement children's rights. Good monitoring helps to set aside and make efficient use of available resources in order to deal with particularly relevant problems, such as HIV/AIDS or unequal education opportunities. In addition, the UN Committee on the Rights of the Child recommends that States parties – where appropriate – seek financial and technical assistance from bilateral and multilateral donors, such as UN organisations like the children's fund UNICEF or the Office of the High Commissioner for Human Rights (OHCHR). Above all, States should make use of international cooperation to bring about the progressive realization of economic, social and cultural rights (article 4 CRC), a process that is often resource intensive.

National and global implementation of the UN Convention on the Rights of the Child

In addition to the obligation to implement children's rights in their own country, States parties should also contribute to the global implementation of the UN Convention on the Rights of the Child through international cooperation (article 4 CRC). Since monitoring is an inherent part of the State's obligation to implement the CRC, States parties should also be supported in fulfilling this part of their obligation in the context of international cooperation.

Stakeholders, procedures and monitoring instruments: Approaches for development cooperation

Monitoring of the CRC should be carried out at all levels of government, that is at the national and – where applicable – regional and local levels. In addition, the UN Committee on the Rights of the Child calls on States parties to establish an independent monitoring body. A number of stakeholders are to be included in the monitoring process. These include civil society organisations and in particular also children, who should participate in monitoring the implementation of their rights as experts in their own cause.

Self-monitoring at all levels of government

The manner in which ministries and other administrative bodies formulate and implement policies in individual sectors, for example healthcare and business, is decisive for the implementation of the UN Convention on the Rights of the Child. For that reason the UN Committee on the Rights of the Child considers that States parties have a duty to conduct self-monitoring and self-evaluation at all levels of government. On a procedural level, the Committee recommends in its →General Comment No. 5 an assessment of the impact of policy measures on children and their rights ("child impact assessment"). To this end, the impact of proposed laws, policies or budget allocations for children and their rights should be assessed in advance. Correspondingly, the actual impact in terms of the implementation of children's rights should be evaluated in retrospect ("child impact evaluation"). For the moment, however, no information is available on the experiences of States parties with these instruments.

Approaches for development cooperation

Human rights-based development cooperation aims, among other things, to help governments at the national, regional and local levels to assess and manage the impact of policies, laws and programmes on children. To this end, it is necessary to improve the technical statistical capacities in the respective countries. Development cooperation should therefore aim to advise the monitoring agents at the different levels on gathering and compiling data. Data on children must also be disaggregated by age, gender and origin, as well as other categories where appropriate, because this is the only way to ascertain for example cases of ethnic or gender-related discrimination in the education or healthcare sectors.

Qualitative and quantitative indicators make it possible to measure whether progress has been made regarding the implementation of children's rights. Indicators are therefore a key factor in monitoring, and good benchmarks for policies or strategies aimed at improvements for children in a particular sector. When development cooperation programmes support the formulation of such policies, they should develop child rights-relevant indicators for tracking the impact on children and children's rights. The result-oriented monitoring systems of development cooperation programmes, which observe and measure the progress

of such programmes towards their goals, provide a particularly good starting point for this purpose.

By improved monitoring, the States parties can provide more targeted support to children and be in a better position to inform citizens, civil society and the UN Committee on the Rights of the Child about how children's rights are being implemented. This is relevant in all countries, but particularly in those where children and youth live in extreme poverty and for the most part without any prospects for the future. Investing in monitoring is therefore worthwhile, since it leads to considerably more targeted policies.

Specific sectors offer further starting points. When providing policy advice, development cooperation programmes should support the corresponding ministries to take the impact on children of policies in a given sector into account at an early stage. They can use the General Comments for guidance. The above mentioned instruments, such as the „child impact assessments“, the „child impact evaluations“ as well as „child rights budgeting“, can be integrated into development cooperation programmes. For example, →German development cooperation supports the government of Burkina Faso in the implementation of a transparent and results-oriented budget planning. The measures focus on the one hand on providing training to the staff at the Ministry of Economy and Finance, in order to sensitize future officials to child rights budgeting. On the other hand, German development cooperation addresses civil society organisations: Studies and training courses deal with the impact of national policies on children's rights. The aim is to improve the monitoring of Burkina Faso's „National Strategy for Growth and Sustainable Development“ by civil society and strengthen its role in the sectoral and national dialogue forums on policymaking.

Monitoring by a central and independent monitoring body

In addition to self-monitoring at all levels of government, the UN Committee on the Rights of the Child demands that States parties establish an independent monitoring body. Article 4 of the CRC provides the legal basis for this requirement. The independent monitoring institution is tasked with examining whether State and private entities respect and protect children's rights. Furthermore it should be

authorised to receive and process individual complaints regarding violations of children's rights. The UN Committee on the Rights of the Child recommends that States that lack resources seek financial and technical support from bilateral and multilateral donors. The Committee does not stipulate a particular model for the monitoring body. The main requirement is that it is independent, and that the work in the area of children's rights is firmly anchored within the body.

A logical step is to task independent National Human Rights Institutions (NHRIs) in accordance with the so-called →Paris Principles with the monitoring of children's rights. Their broad mandate for protecting human rights also includes children's rights. At the same time they are particularly well positioned to manage those areas where children's rights and other human rights intersect, thus creating synergies. Founded in 1990, the →Human Rights Commission of Malaysia (SUHAKAM) is one of the NHRIs working on children's rights. Among other things, SUHAKAM has the mandate to monitor the implementation of the CRC. It has set up various working groups focussed on the Convention, for example the Law Reform and International Treaties Working Group, which advises lawmakers on bringing national laws in line with international human rights obligations. It also brings together the different stakeholders working on international human rights treaties. SUHAKAM promotes dialogue with civil society and among other things has organised a round table on the right to education of children with learning disabilities.

On the other hand, some countries have established separate institutions for the monitoring of the CRC, for example in the form of ombudspersons or commissioners for children's rights. However the designation of the institution is not of prime importance; for instance there are ombudspersons or commissioners for human rights whose mandates are as broad as those of National Human Rights Institutions. The distinguishing feature of a separate monitoring institution is that it works exclusively in the area of children's rights and has the appropriate expertise in this area. Institutions specialised in children's rights are mainly to be found in European States, as well as in Canada, Australia and New Zealand. The pioneer for this approach was Norway in 1981, followed by Costa Rica in 1987, which, however, integrated its separate institution for children's rights into its National Human Rights Institution a few years later.

Nowadays the UN Committee on the Rights of the Child generally recommends that States parties establish a monitoring institution modelled on National Human Rights Institutions, or integrate children's rights at these institutions. This creates synergies in the monitoring of the different human rights treaties and means that experience can be jointly gained in the area of monitoring.

Approaches for development cooperation

One task of human rights-based development cooperation is supporting the establishment of independent monitoring institutions, for example National Human Rights Institutions or ombudspersons for children's rights. The Federal Ministry for Economic Cooperation and Development (BMZ), for example, undertook to do this in its 2011 Human Rights Strategy. Governance reforms provide good starting points for such support: Development cooperation programmes aid partner countries in creating the political, legal and financial conditions for an independent monitoring institution, so that the minimum standards stipulated in the above mentioned Paris Principles can be fulfilled. This applies for example to the basis in law required for NHRIs. A law or constitutional article must guarantee the independence of the institution and a broad human or children's rights-based mandate. This legal basis must also set out the institution's reporting line and secure its financing. In addition to providing the staff of the institution with expert advice and training on children's rights, capacity development is necessary at many institutions to ensure that the monitoring body can fulfil its mandate both internally and externally. Independent monitoring institutions also make valuable contributions to the international monitoring through the CRC reporting process; be it by compiling alternative reports or by providing critical and constructive advice to the government on its State report. Thanks to its dialogue-based advisory approach, development cooperation can assist such processes.

Independent monitoring by civil society

Civil society is another important stakeholder in monitoring children's rights. The UN Committee on the Rights of the Child stresses this in its →guidelines on the CRC reporting process, as well as in its General Comments. Governments must respect the independence of civil society monitoring institutions, for example NGOs. At the same time, the UN Committee on the Rights of the Child calls on

governments to work together with civil society in monitoring the CRC. In this way, monitoring by civil society and by a central and independent monitoring institution complement each other.

Civil society also plays an important role in the international monitoring carried out by the UN Committee on the Rights of the Child. Many organisations compile alternative reports to the State reports and take part in the Committee's confidential Pre-Sessional Working Groups. The goal of the alternative reports, as well as of the Pre-Sessional Working Groups, is to promote exchange between the UN Committee on the Rights of the Child and civil society on the challenges faced in the national implementation of the CRC. During these meetings, civil society organisations have the opportunity to explain what they consider to be priority issues for an upcoming CRC reporting process. In order to ensure that the perspectives of civil society are better represented in the CRC reporting process, national coalitions for the implementation of the CRC have been formed in many countries.

Approaches for development cooperation

To ensure constructive and resilient relations between the State and society, it is helpful to promote civil society organisations through development cooperation. This also, and above all, applies to organisations that monitor the progress of human or children's rights. A special focus here should be providing support to initiatives that are organised by children and youth, or in which they play an active part. A good starting point for development cooperation is strengthening networks or already existing national coalitions that contribute to the monitoring of the CRC.

In addition to supporting civil society, development cooperation should advise government bodies on how to initiate and realise dialogue and participative processes with civil society, and in particular with children and youth, in the monitoring of the CRC. In this way, decision makers can be assisted with the development and execution of adequate participative formats. This includes, for example, platforms for dialogue in which civil society, as well as children and youth from corresponding organisations, explain on a regular basis their views on the situation of children and the implementation of the CRC in their respective States.

📖 Links and resources for further information

Links

- →Committee on the Rights of the Child
- →State reports and alternative reports, listed by sessions
- →Concluding Observations
- →General Comments
- →Child Rights Connect
- →Child Rights International Network (CRIN)
- →UNICEF Innocenti Research Center

Documents

- →Convention on the Rights of the Child
- BMZ (2011): →Human rights in German development policy. Strategy. (PDF, 574 KB)
- BMZ (2011): →Young people in German development policy – a contribution to the implementation of the rights of children and youth. Position Paper. (PDF, 453 KB)
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Literature

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- Sedletzki, Vanessa (2012): →Championing children's rights: A global study of independent human rights institutions for children – summary report. (PDF, 1 MB, not barrier-free). UNICEF Innocenti Research Centre
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